Notice of In-Person Meeting

Standing Committee on Rules of Practice and Procedure
May 17, 2024 Open Meeting, 9:30 a.m.
Instructions for Members of the Public

The May 17, 2024, 9:30 a.m. open meeting of the Standing Committee on Rules of Practice and Procedure will be held in-person at the Maryland Judicial Center, Rooms 131-132, 187 Harry S. Truman Parkway, Annapolis, MD 21401. Members of the public may attend.

If you have a comment related to a posted agenda item, you may e-mail it to rules@mdcourts.gov at least 24 hours prior to the beginning of the meeting. Your comment will be distributed to the members of the Rules Committee prior to the meeting.

Agenda and Proposed Rules Changes

- The meeting agenda and proposed Rules changes are attached to this Notice. During the meeting, copies of any updated materials will be available.

The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.

AGENDA FOR
RULES COMMITTEE MEETING

May 17, 2024, 2024 (Friday)
9:30 a.m.

Maryland Judicial Center
Rooms 131-132
187 Harry S. Truman Parkway
Annapolis, MD 21401

Item 1	Consideration of *Voir Dire* referral from the Supreme Court	Judge Wilner
Item 2	Consideration of proposed amendments and new Rules recommended by the Judgments Subcommittee:	Judge Wilson

Rule 2-510 (Subpoenas – Court Proceedings and Depositions)
NEW Rule 2-510.2 (Subpoenas – Financial Information)
Rule 2-633 (Discovery in Aid of Enforcement)
NEW Rule 2-640 (Enforcement Procedures – Judgment Debtor in Military Service)
Rule 2-641 (Writ of Execution – Issuance and Content)
Rule 2-645 (Garnishment of Property – Generally)
Rule 2-646 (Garnishment of Wages)
Rule 2-647 (Enforcement of Judgment Awarding Possession)
Rule 3-510 (Subpoenas)
NEW Rule 3-510.2 (Subpoenas – Financial Information)
Rule 3-633 (Discovery in Aid of Enforcement)
NEW Rule 3-640 (Enforcement Procedures – Judgment Debtor in Military Service)
Rule 3-641 (Writ of Execution – Issuance and Content)
Rule 3-645 (Garnishment of Property – Generally)
Rule 3-646 (Garnishment of Wages)
Rule 3-647 (Enforcement of Judgment Awarding Possession)

Item 3 Consideration of proposed amendments related to the completion of the MDEC Roll-Out: — Mr. Brault

Rule 1-101 (Applicability)
Rule 1-105 (Official Record of Maryland Rules and Appellate Decisions)
Rule 1-342 (Notification of Orders, Rulings, and Court Proceedings
Rule 2-510 (Subpoenas—Court Proceedings and Depositions)
Rule 2-541 (Magistrates)
Rule 3-510 (Subpoenas)
Rule 4-265 (Subpoena for Hearing or Trial)
Rule 7-103 (Method of Securing Appellate Review)
Rule 7-206.1 (Record—Judicial Review of Decision of the Workers' Compensation Commission)
Rule 8-201 (Method of Securing Review—The Appellate Court)
Rule 8-606 (Mandate)
Rule 9-205.3 (Custody and Visitation-Related Assessments)
Rule 9-208 (Referral of Matters to Standing Magistrates)
Rule 11-103 (Magistrates)
Rule 11-107 (Service of Papers)
Rule 16-402 (Operations)
Rule 16-406 (Notice to the Appellate Court)
Rule 16-901 (Scope of Chapter)
Rule 20-101 (Definitions)
Rule 20-102 (Application of Title)
Rule 20-104 (User Registration)
Rule 20-106 (When Electronic Filing Required; Exceptions)
Rule 20-109 (Access to Electronic Records in MDEC Actions)
Rule 20-201 (Requirements for Electronic Filing)
Rule 20-204 (Notice of Filing Tangible Item)
Rule 20-205 (Service)
Rule 20-301 (Content of Official Record)
Rule 20-405 (Other Submissions)
Rule 20-501 (MDEC System Outage)

Item 4 Consideration of proposed amendments to Rule 8-132 (Transfer of Appeal Improperly Taken) — Judge Nazarian

Item 5 Consideration of proposed amendments to Rule 8-511 (Amicus Curiae) — Judge Nazarian

Item 6 Consideration of proposed housekeeping amendments from the 198th Report: — Deputy Reporter

Rule 19-305.5 (Unauthorized Practice of Law, Multi-Jurisdictional Practice of Law) (5.5)
Rule 19-504 (Pro Bono Attorney)
Rule 19-505 (List of Pro bono and Legal Services Programs)

AGENDA ITEM 1

THE COURT OF APPEALS OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. ALAN M. WILNER, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
COLBY L. SCHMIDT, Deputy Reporter
HEATHER COBUN, Assistant Reporter
MEREDITH A. DRUMMOND, Assistant Reporter

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MEMORANDUM

TO	:	Members of the Rules Committee
FROM	:	Meredith Drummond, Esq., Assistant Reporter
DATE	:	May 7, 2024
SUBJECT	:	Review of *Voir Dire*

This topic comes before the Rules Committee on a referral from the Supreme Court. By letter dated April 11, 2024, the Chief Justice requested "that the Rules Committee consider, on an expedited basis, whether to recommend changes to the Maryland Rules concerning the use of juror *voir dire* to allow parties to obtain information to inform the intelligent exercise of peremptory challenges."[1] The topic of *voir dire* was most recently raised during the General Assembly's 2024 legislative session. Senate Bill 827 ("SB827") aimed to define the purpose of jury examination and establish a workgroup to study Maryland's *voir dire*. [2]

In his letter, the Chief Justice noted that the Rules Committee last made a series of recommendations concerning *voir dire* in its 185th Report, dated July 15, 2014. The Chief Justice requested that the Rules Committee address possible changes to the *voir dire* process at its May 19, 2024 meeting.

[1] Letter from Hon. Matthew J. Fader, Chief Justice, Sup. Ct. of Md., to Hon. Alan M. Wilner, Chair, Standing Comm. on Rules of Prac. & Proc. (Apr. 11, 2024). The letter from the Chief Justice, with attachments, is attached to this memorandum as **Exhibit A.**
[2] The full text of SB827 is attached to the Chief Justice's letter. See **Exhibit A.**

BACKGROUND MATERIALS

SB827 – Courts and Judicial Proceedings – Jury Examination and Workgroup to Study the Voir Dire Process

SB827, sponsored by Senator William C. Smith, Jr., was introduced in the Senate on February 2, 2024.[3] The bill proposed adding § 8-423 to the Courts and Judicial Proceedings Article to define the scope of *voir dire*. Proposed § 8-423 provided:

> (B) THE PURPOSE OF JURY EXAMINATION IS TO:
> (1) IDENTIFY AND REMOVE PROSPECTIVE JURORS WHO ARE UNABLE TO SERVE FAIRLY AND IMPARTIALLY; AND
> (2) ALLOW THE PARTIES TO OBTAIN INFORMATION THAT MAY PROVIDE GUIDANCE FOR THE USE OF PEREMPTORY CHALLENGES AND CHALLENGES FOR CAUSE.

The proposed language did not address who is responsible for conducting the *voir dire* examination. Later amendments to SB827 proposed a Workgroup to Study the Voir Dire Process.

Several organizations, including the Maryland Association for Justice, the State's Attorney for Baltimore City, the Public Justice Center, the Maryland Office of the Public Defender, and two local bar associations, provided oral or written testimony seeking a favorable report on SB827 from the Senate Judicial Proceedings Committee.[4] In contrast, the Maryland State's Attorney's Association sought an unfavorable report on the bill.[5] Informational letters from the Maryland State Bar Association and the Maryland Judiciary raised concerns about the lack of clarity in the bill regarding implementation of the new *voir dire* process and the drastic change to settled precedent without further study, respectively.[6]

The bill received a report of Favorable with Amendment from the Judicial Proceedings Committee and passed (45-0) in the Senate. SB827 was referred

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[3] Courts and Judicial Proceedings – Jury Examination and Workgroup to Study the Voir Dire Process, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0827 (last visited May 7, 2024).

[4] *See* Committee Testimony and Witness Signup, SB827 – Courts and Judicial Proceedings – Jury Examination and Workgroup to Study the Voir Dire Process, https://mgaleg.maryland.gov/mgawebsite/Legislation/WitnessSignup/SB0827?ys=2024RS (last visited May 7, 2024) (including links to written testimony and letters).

[5] *See id.*

[6] *See* Letter from MSBA to Members of the S. Jud. Proc. Comm. (February 28, 2024), https://mgaleg.maryland.gov/cmte_testimony/2024/jpr/1fUnl4XJzvRQn6jCYKqIw4fUKl0BGaxan.pdf; Letter from Suzanne D. Pelz, Esq., Staff, Legis. Comm. to S. Jud. Proc. Comm. (February 27, 2024), https://mgaleg.maryland.gov/cmte_testimony/2024/jpr/1K2H1h19bCF-st-vdyMmx1JVl8Dqh4pEf.pdf.

to the Judiciary Committee of the House on March 5, 2024, but was not brought to a vote.[7]

By letter to the Chief Justice dated April 4, 2024, Del. Luke H. Clippinger, Chair of the Judiciary Committee, and Sen. Smith, Chair of the Judicial Proceedings Committee, outlined the proposals contained in SB827. The letter further indicated "that, at this time, the concerns with regard to the *voir dire* process raised in SB827 are in the purview and most appropriate for the consideration of the Standing Committee on Rules of Practice and Procedure."[8]

185th Report of the Rules Committee

The Rules Committee most recently considered changes to the *voir dire* process in 2014. In *Pearson v. State*, 437 Md. 350, 357 n.1 (2014), the Court of Appeals, now the Supreme Court, declined to "address Pearson's contention that Maryland should discontinue limited *voir dire* by allowing *voir dire* to facilitate the intelligent use of peremptory challenges" and asked the Rules Committee "[t]o gather more information on the important issue of whether to maintain limited *voir dire*." The Committee discussed the topic at the June 19, 2014 Rules Committee meeting.[9]

On July 15, 2014, the Committee transmitted its 185th Report with the results of its extensive research.[10] The Report cited numerous resources, including publications from the National Center of State Courts ("NCSC") and standards and principles of the American Bar Association ("ABA").

After researching *voir dire* practices in other states, the Report noted:

> Most of the other States, by statute, rule, or case law, clearly permit *voir dire* to be used to elicit information relevant to the exercise of peremptory challenges, at least in criminal cases. There are others that have not articulated that principle quite so clearly but have described the scope of *voir dire* in such a way as to indicate that it is not limited just to discovering a basis for a challenge for cause.[11]

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[7] *See supra* note 3.
[8] Letter from Luke H. Clippinger, Chair, Judiciary Committee & William C. Smith, Jr., Chair, Judicial Proceedings Committee to Hon. Matthew J. Fader, Chief Justice, Sup. Ct. of Md. (April 4, 2024). A copy of the letter is included as part of **Exhibit A.**
[9] Relevant excerpts of the minutes from the June 19, 2014 Rules Committee meeting are attached to this memorandum as **Exhibit B.**
[10] Standing Comm. on Rules of Prac. & Proc., One Hundred Eighty-Fifth Report (July 15, 2014). A copy of the Report is attached as **Exhibit C**.
[11] *Id.* at 6-7.

The Report determined, "Among the States, it appears that, aside from Maryland, only Pennsylvania, California in criminal cases, and Virginia purport clearly to limit *voir dire* to eliciting grounds for a challenge for cause."[12]

The 185th Report contained five recommendations. In regard to the scope of *voir dire*, the Report stated, "The Court should join the Federal courts and the great majority of State courts and permit *voir dire* to include relevant inquiries designed to facilitate or guide the intelligent exercise of peremptory challenges, in both civil and criminal cases."[13] Other recommendations concerned control of the *voir dire* process and the development of form questions or inquiries.

In its final recommendation, the Rules Committee noted that implementation of the recommended extension of *voir dire* should wait until the Committee had an opportunity to review the final form jury selection questions drafted by a special committee of the Maryland State Bar Association ("MSBA"). Although the timeframe for this project was unclear at the time, the Committee estimated that development of the form questions may take two years.[14]

In 2018, the MSBA's Special Committee on *Voir Dire* completed the Model Jury Selection Questions For Maryland Criminal & Civil Trials (the "MJSQ").[15] The MJSQ includes both civil and criminal question sets. As the Preface of the MJSQ notes, "Each set of questions includes those required by Maryland law and others likely to reveal juror bias regarding a wide variety of possible trial issues. They are not intended to be exhaustive, exclusive, or compulsory."[16] Although the MJSQ has been completed, no further action has been taken on the 185th Report at this time.

ISSUES TO CONSIDER

Though the Chief Justice's letter presents one main topic for consideration, many aspects of the jury selection process are interrelated. Changes to part of the process may require reconsideration of other practices and procedures. Accordingly, this memorandum identifies several issues for consideration by the Committee, including (1) the scope of *voir dire*, (2) the procedure for peremptory challenges, and (3) the limitations on who may conduct *voir dire*.

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[12] *Id.* at 5.
[13] *Id.* at 10.
[14] *Id.* at 10-11.
[15] Maryland State Bar Association Special Committee on *Voir Dire*, Model Jury Selection Questions for Maryland Criminal & Civil Trials (2018). The MJSQ is attached as **Exhibit D**.
[16] *Id.* at xiii.

Scope of Voir Dire

A. Maryland Law

Several Maryland Rules address *voir dire* in the trial courts. The Maryland Rules set forth some guidelines for *voir dire*, but do not explicitly state the scope of the examination. As noted in the Chief Justice's letter of April 11, 2024, the scope of *voir dire* in Maryland has been defined by case law. In a criminal action, the Court of Appeals, now the Supreme Court, held in 2020:

> [W]e continue to stand by the well-established principle that "Maryland employs limited *voir dire*—that is, in Maryland, *voir dire*'s sole purpose is to elicit specific cause for disqualification, not to aid counsel in the intelligent use of peremptory strikes." We require *voir dire* questions concerning the three fundamental rights at issue [the presumption of innocence, the burden of proof, and the right not to testify] because they could elicit responses that would give rise to meritorious motions to strike the responding prospective jurors for cause—i.e., grounds for disqualification—not because such responses could aid counsel in the intelligent use of peremptory strikes.[17]

This position was recently reiterated in *Kidder v. State*, 475 Md. 113 (2021). While considering the constitutionality of a jury selection procedure, the Supreme Court explained, "This Court has frequently emphasized that, unlike courts in many other jurisdictions, Maryland courts allow only 'limited *voir dire*' – meaning that the sole purpose of *voir dire* questioning is to determine whether prospective jurors should be struck for cause, not to elicit information for the exercise of peremptory strikes in the second stage of jury selection."[18]

In this manner, Maryland continues to permit only limited *voir dire*. Expansion of the scope of *voir dire* would require overruling precedent.

B. National Trends

The Rules Committee previously completed a national study of the scope of *voir dire* examination when drafting the 185th Report. As noted in the

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[17] *Kazadi v. State*, 467 Md. 1, 46-47 (2020) (internal citations omitted). In regard to discussion in civil cases, *see Williams v. Mayor & City Council of Baltimore*, 98 Md. App. 209, 217 (1993) ("Maryland, as we have observed, has, up to this point, regarded the function of *voir dire* as discovering disqualifying information that would support challenges for cause, and not for assisting in the exercise of peremptory challenges.").

[18] 475 Md. at 125.

Report, Standard 15-2.4 of the ABA Criminal Justice Standards goes beyond Maryland's limited scope of *voir dire*.[19]

Standard 15-2.4(c) sets forth an extended scope of *voir dire*: "Voir dire examination should be sufficient to disclose grounds for challenges for cause and to facilitate intelligent exercise of peremptory challenges."[20]

Upon review, it appears that the research findings for the 185th Report concerning the national scope of *voir dire* remain accurate. Several states have addressed the scope of *voir dire* through Rule, typically indicating that questions are limited to determining a basis for a challenge for cause or obtaining information to assist in use of peremptory strikes.[21]

After surveying both federal and state jurisdictions, the 185th Report concluded that only Maryland, Pennsylvania, Virginia, and California (in criminal cases), purport to limit *voir dire* to only eliciting grounds for challenges for cause.[22] At this time, the relevant Pennsylvania case law appears to remain good law.[23] The Virginia Code provides that *voir dire* in civil and criminal cases may include any relevant question, without reference to peremptory challenges.[24] As noted in the 185th Report, case law still appears to permit discretion to a trial court to allow additional questioning.[25]

Similarly, although there have been changes to the jury selection process in California, discussed further *infra*, the language in Section 223 concerning the scope of *voir dire* in criminal cases remains unchanged, providing, "Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause."[26]

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[19] *See* Standards for Criminal Justice, Standard 15-2.4 (Am. Bar Ass'n 1996).
[20] *See id.* The same language appears in Principle 11(B)(3) of the ABA's Principles for Juries and Jury Trials.
[21] *See, e.g.*, Ala. R. Cr. Pr. 18.4; Ark. R. Crim. P. 32.2; Colo. R. Cr. P. 24; Mich. R. Cr. P. 6.412; Minn. R. Crim. P. 26.02; Miss. R. Cr. P. 18.4; Nev. R. Crim. Prac. 17.
[22] Standing Comm. on Rules of Prac. & Proc., One Hundred Eighty-Fifth Report at 5-7 (July 15, 2014).
[23] *Commonwealth v. England*, 375 A.2d 1292 (Pa. 1977).
[24] *See* Va. Code Ann. § 19.2-262.01 (West) ("…shall have the right to ask such person or juror directly any relevant question to ascertain whether the juror can sit impartially in either the guilt or sentencing phase of the case. Such questions may include whether the person or juror is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein."); Va. Code Ann. § 8.01-358 (West) (…"shall have the right to ask such person or juror directly any relevant question to ascertain whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein…").
[25] *See Green v. Commonwealth*, 580 S.E.2d 834 (Va. 2003); *Davis v. Sykes*, 121 S.E.2d 513 (Va. 1961).
[26] Cal. Civ. Pro. Code § 223(d) (West 2024).

Although the 185th Report only highlighted the limited *voir dire* of the above-referenced states, it acknowledged ambiguity about the standard in Idaho.[27] In the civil context, the Idaho Rules appear to limit the scope of questioning, stating, "Any question by an attorney to a prospective juror which is not directly relevant to the qualifications of the juror, or is not reasonably calculated to discover the possible existence of a ground for challenge, or has been previously answered, must be disallowed by the court upon objection or upon the court's own initiative."[28] The criminal rule includes the same language.[29] However, case law suggests that questioning for the purpose of intelligently exercising peremptory challenges is permitted.[30]

Since the 185th Report, Arizona now joins the list of states that limit inquiries to questions that elicit information related to a challenge for cause.[31] However, as discussed *infra*, the change in Arizona was prompted by the elimination of peremptory challenges, which are permitted in Maryland.

Overall, the limited scope of *voir dire* in Maryland still places the State in a small minority of jurisdictions that do not permit *voir dire* questioning to assist in the exercise of peremptory challenges.

Peremptory Challenges

A. Maryland Law

In Maryland courts, parties may exercise peremptory challenges in both civil and criminal jury trials. Rule 2-512 (e) addresses peremptory challenges in the civil context, setting forth the general procedure for challenges and the number of challenges per party:

> (1) Designation of Qualified Jurors; Order of Selection
>
> Before the exercise of peremptory challenges, the trial judge shall designate those individuals on the jury list who remain qualified after examination. The number designated shall be sufficient to provide the required number of sworn jurors, including any alternates, after allowing for the exercise of peremptory challenges. The trial judge shall at the

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[27] Standing Comm. on Rules of Prac. & Proc., One Hundred Eighty-Fifth Report at 7 (July 15, 2014).
[28] Idaho R. Civ. P. 47.
[29] Idaho Crim. R. 24.
[30] *See State v. Larsen*, 923 P.2d 1001, 1003 (Idaho Ct. App. 1996) ("On the other hand, it is also well settled in Idaho that 'wide latitude is allowed counsel in the examination of potential jurors on voir dire to afford counsel information which might enable the attorney to more intelligently exercise challenges, either for cause or peremptorily.'").
[31] *See* Ariz. R. Crim. P. 18.5; Ariz. R. Civ. P. 47.

same time prescribe the order to be followed in selecting individuals from the list.

(2) Number; Exercise of Peremptory Challenges

Each party is permitted four peremptory challenges plus one peremptory challenge for each group of three or less alternates to be impanelled. For purposes of this section, all plaintiffs shall be considered as a single party and all defendants shall be considered as a single party unless the trial judge determines that adverse or hostile interests between plaintiffs or between defendants justify allowing one or more of them the separate peremptory challenges available to a single party. The parties shall simultaneously exercise their peremptory challenges by striking names from a copy of the jury list.

Peremptory challenges in criminal jury trials are addressed in Rule 4-313. Section (a) sets forth the number of challenges, citing to Code, Courts Article, § 8-420(a). Section (b) concerns the challenge process:

(1) By Alternating Challenges

On request of any party for alternating challenges, the clerk shall call each qualified juror individually in the order previously designated by the court. When the first qualified juror is called, the State shall indicate first whether that qualified juror is challenged or accepted. When the second qualified juror is called, the defendant shall indicate first whether that qualified juror is challenged or accepted. When the third qualified juror is called, the State shall again indicate first whether that qualified juror is challenged or accepted, and the selection of a jury shall continue with challenges being exercised alternately in this fashion until the jury has been selected.

(2) By Simultaneous Striking From a List

If no request is made for alternating challenges, each party shall exercise its challenges simultaneously by striking names from a copy of the jury list.

(3) Remaining Challenges

After the required number of qualified jurors has been called, a party may exercise any remaining peremptory challenges to which the party is entitled at any time before the jury is sworn, except that no challenge to the first 12 qualified jurors shall be permitted after the first alternate juror is called.

If the Rules Committee recommends changes to the procedure associated with peremptory challenges, amendments would be needed, at a minimum, to Rules 2-512 and 4-313.

B. Report and Recommendations of the Rules Review Subcommittee

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("EJC Report").[32] The Subcommittee had been tasked with identifying instances in the Rules which "reflect, perpetuate, or fail to correct systemic biases."[33]

The EJC Report notes that concerns about implicit bias in the jury selection process were raised in comments from justice partners. The comments primarily concerned criminal cases and the use of peremptory strikes.[34] As the EJC Report explains, "The general consensus – shared by the overwhelming majority of legal and academic circles – is that the process established by the Supreme Court in *Batson v. Kentucky*, 476 U.S. 79 (1986), is deeply flawed and provides meager protection against the improper exercise of peremptory strikes on the basis of race."[35]

Issues with the current *Batson* framework stem from several difficulties, including, "(1) the impossibility of knowing a party's true motivation when making a strike; (2) the party's own lack of awareness of the role of unconscious bias in these decisions, and (3) the general reluctance of trial judges to attribute an attorney's facially neutral decision-making process to racist intentions."[36] The EJC Report highlights that unconscious bias may impact an attorney's decision to exercise a peremptory challenge, even when facially race and gender-neutral rationales are offered.[37]

After suggesting that rules expanding the *Batson* framework are unlikely to correct these issues, the EJC Report concludes that eliminating peremptory strikes "would be the most direct solution to the innately discriminatory practice of peremptory strikes."[38] However, the EJC Report acknowledges that peremptory strikes have been enshrined in the Maryland Code by the Legislature. For example, Code, Courts Article, § 8-420 sets forth permissible peremptory challenges in criminal cases. While suggesting that the Supreme Court may eliminate peremptory strikes by Rule, the EJC Report ultimately

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[32] Md. Jud. Council, March 22, 2023 Meeting Minutes, https://www.mdcourts.gov/sites/default/files/import/judicialcouncil/pdfs/minutes/minutes20230322.pdf.

[33] Md. Comm. on Equal Just. Rules Review Subcomm., Report and Recommendations at *v* (June 2022). Relevant excerpts of the EJC Report have been attached to this memorandum as **Exhibit E.**

[34] *Id.* at 73.

[35] *Id.* at 74.

[36] *Id.* at 76.

[37] *Id.* at 74.

[38] *Id.* at 75.

recommends that, "The elimination of peremptory strikes should be considered whether by rule or statute."[39]

C. ABA Principles for Juries and Jury Trials

The ABA has addressed best practices for jury selection in its Principles for Juries and Jury Trials.[40] In Subdivision D of Principle 11, the ABA asserts, "Peremptory challenges should be available to each of the parties." In further describing this Principle, the ABA notes, "The number of peremptory challenges should be sufficient, but limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury and to provide the parties confidence in the fairness of the jury." [41]

In the Comment to Subdivision D, the ABA addresses the necessity of peremptory challenges, including that they "enable parties to exclude jurors they suspect of bias, but with respect to whom they lack sufficient proof of bias to sustain a challenge for cause" and "allow the parties, especially defendants in criminal proceedings, to participate in the construction of the tribunal that is to judge them." In addition, peremptory strikes safeguard against possible error in the determination of for cause challenges.[42]

Subdivision F of Principle 11 incorporates the three-part *Batson* test concerning peremptory challenges. However, in the Comment related to the Subdivision, the ABA acknowledges the perceived failures of *Batson*, explaining:

> Several state courts have explicitly taken on the perceived failure of *Batson* and have instituted, or are considering implementation of, procedural changes, other than eliminating peremptory challenges, that aim at protecting the fair use of peremptory challenges that *Batson* failed to achieve. The changes have taken four primary forms: (1) finding that a prima facie case has been made if a party strikes the last member of a racially cognizable group; (2) eliminating the first step in the *Batson*; (3) removing the requirement that a successful *Batson* challenge can result only if the attorney has engaged in purposeful discrimination in deciding to excuse the juror; and (4) identifying a series of juror characteristics

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[39] *Id.* at 77. In addition to discussing the possible elimination of peremptory strikes the EJC Report suggests other ways to modify the jury selection process. These additional matters will be referred to an appropriate Subcommittee of the Rules Committee for consideration and were not included in the expedited referral from the Chief Justice.

[40] *See* Principles for Juries and Jury Trials (Am. Bar Ass'n 2023), *available at* https://www.americanbar.org/content/dam/aba/administrative/american_jury/principles-juries-jury-trial.pdf.

[41] *Id.* at 79.

[42] *Id.* at 89.

that presumptively indicate a discriminatory basis for removal of that juror.[43]

D. Actions of Other States

Since the Rules Committee transmitted the 185th Report in 2014, several states have amended their jury selection procedures in an effort to address the deficiencies associated with the *Batson* framework. The most notable changes include amending Rules or statutes addressing peremptory challenges or, in the case of one state, eliminating all peremptory challenges.

a. Expanding Procedure for Peremptory Challenges by Rule[44]

One of the first attempts to address concerns with the *Batson* approach appeared in Washington. After the American Civil Liberties Union proposed a new rule regarding jury selection to the Washington Supreme Court, the Court created a workgroup to combine various proposals and clarify the different positions presented.[45]

Members of the Workgroup in Washington agreed that the proposed Rule should apply to criminal and civil trials, that eliminating peremptory challenges was not the preferred reform, and that implicit bias needed to be considered.[46] Additional areas of agreement included that a low threshold to hear an objection to a peremptory challenge was needed and that the challenging party, not the objecting party, should have the burden of proof.[47]

After the Final Report of the Jury Selection Workgroup was submitted, Washington State adopted the following General Rule 37 concerning jury selection:

> (a) Policy and Purpose. The purpose of this rule is to eliminate the unfair exclusion of potential jurors based on race or ethnicity.
>
> (b) Scope. This rule applies in all jury trials.
>
> (c) Objection. A party may object to the use of a peremptory challenge to raise the issue of improper bias. The court may also raise this objection

[43] *Id.* at 97 (internal citations omitted).
[44] A collection of the Rules discussed in this section are attached as **Exhibit F**.
[45] *See* Jury Selection Workgroup, Final Report at 1, *available at* https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/OrderNo25700-A-1221Workgroup.pdf.
[46] *Id.* at 3.
[47] *Id.* at 4.

on its own. The objection shall be made by simple citation to this rule, and any further discussion shall be conducted outside the presence of the panel. The objection must be made before the potential juror is excused, unless new information is discovered.

(d) Response. Upon objection to the exercise of a peremptory challenge pursuant to this rule, the party exercising the peremptory challenge shall articulate the reasons that the peremptory challenge has been exercised.

(e) Determination. The court shall then evaluate the reasons given to justify the peremptory challenge in light of the totality of circumstances. If the court determines that an objective observer could view race or ethnicity as a factor in the use of the peremptory challenge, then the peremptory challenge shall be denied. The court need not find purposeful discrimination to deny the peremptory challenge. The court should explain its ruling on the record.

(f) Nature of Observer. For purposes of this rule, an objective observer is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in Washington State.

(g) Circumstances Considered. In making its determination, the circumstances the court should consider include, but are not limited to, the following:

(i) the number and types of Questions posed to the prospective juror, which may include consideration of whether the party exercising the peremptory challenge failed to Question the prospective juror about the alleged concern or the types of Questions asked about it;

(ii) whether the party exercising the peremptory challenge asked significantly more Questions or different Questions of the potential juror against whom the peremptory challenge was used in contrast to other jurors;

(iii) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;

(iv) whether a reason might be disproportionately associated with a race or ethnicity; and

(v) whether the party has used peremptory challenges disproportionately against a given race or ethnicity, in the present case or in past cases.

(h) Reasons Presumptively Invalid. Because historically the following reasons for peremptory challenges have been associated with improper discrimination in jury selection in Washington State, the following are presumptively invalid reasons for a peremptory challenge;

(i) having prior contact with law enforcement officers;
(ii) expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;
(iii) having a close relationship with people who have been stopped, arrested, or convicted of a crime;
(iv) living in a high-crime neighborhood;
(v) having a child outside of marriage;
(vi) receiving state benefits; and
(vii) not being a native English speaker.

(i) Reliance on Conduct. The following reasons for peremptory challenges also have historically been associated with improper discrimination in jury selection in Washington State: allegations that the prospective juror was sleeping, inattentive, or staring or failing to make eye contact; exhibited a problematic attitude, body language, or demeanor; or provided unintelligent or confused answers. If any party intends to offer one of these reasons or a similar reason as the justification for a peremptory challenge, that party must provide reasonable notice to the court and the other parties so the behavior can be verified and addressed in a timely manner. A lack of corroboration by the judge or opposing counsel verifying the behavior shall invalidate the given reason for the peremptory challenge.

Although there do not appear to be available published studies addressing the effectiveness of Rule 37, anecdotal evidence suggests that the reform is promising. When a similar rule change was considered in Arizona, the Korematsu Center for Law and Equality at Seattle University School of Law was asked to comment on Rule 37.[48] The Center noted:

> In our numerous discussions with lawyers and judges in our state about the new rule since its adoption, reactions have been largely neutral or positive. Practitioners have reported that the rule is triggered in cases only from time to time; that the rule has been followed without fanfare or disruption; and that the rule appears to be accomplishing its purpose, in large part because peremptories are being attempted far less often in circumstances that would raise concerns about potential racial bias.[49]

Similarly, the Loren Miller Bar Association of Seattle submitted a comment during Arizona's consideration of a new Rule, noting, "[D]espite early

[48] *See* Letter from Prof. Robert S. Chang, Executive Director, Korematsu Center for Law & Equality & Taki V. Flevaris, Faculty Affiliate, Korematsu Center for Law & Equality to Hon. Justices of the Ariz. Sup. Ct. (April 29, 2021), *available at* https://www.azcourts.gov/Rules-Forum/aft/1196.
[49] *Id.*

reservations about the objective observer standard, Washington has managed to use and apply GR 37 in these first three years of the rule's existence."[50]

The Chief Justice of the Supreme Court of Washington was also invited by the Arizona Supreme Court to comment on his state's experience with the new rule.[51] He informed the Arizona Supreme Court that "the rule appears to be working to deter and mitigate racial discrimination in the use of peremptory challenges."[52] The Chief Justice also noted, however, that "complete elimination of peremptory challenges is the only way to fully overcome [the problem of racial discrimination in the use of peremptory challenges] and would serve the interests of justice."[53] He considered Washington's Rule 37 "an important, albeit lesser step toward the same goal of eradicating racial bias in jury selection."[54]

Other states have followed Washington's lead and amended their Rules regarding juror selection. For example, new Rules in Connecticut, Oregon, and New Jersey mirror the Washington approach, with similar organization and structure.

Portions of Connecticut's Section 5-12 appear to expand on Washington's version.[55] For example, Section 5-12(f) adds two more circumstances that should be considered in making a determination on the validity of peremptory challenges: (1) whether issues concerning race or ethnicity play a part in the facts of the case to be tried and (2) whether the reason given by the party exercising the peremptory challenge is contrary or unsupported by the record. Having been a victim of a crime is also added as a presumptively invalid reason for a peremptory challenge. Connecticut also requires the chief justice to appoint an individual to monitor issues related to the new Rule.[56]

Oregon also has followed Washington's lead. Amendments to Oregon Rule of Civil Procedure 57 became effective on January 1, 2024.[57] In addition to some stylistic changes, the amendments created a new process to exercise peremptory strikes. Adding to the protected classes of race and sex, Rule 57

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[50] *See* Letter from James F. Johnson, President, Loren Miller Bar Association to Hon. Robert Brutinel, Chief Justices, Ariz. Sup. Ct. (May 3, 2021), *available at* https://www.azcourts.gov/Rules-Forum/aft/1196.
[51] *See* Letter from Hon. Steven C. Gonzalez, Chief Justice, Sup. Ct. Wash. to Hon. Justices of Ariz. Sup. Ct. (April 29, 021), *available* at https://www.azcourts.gov/Rules-Forum/aft/1196.
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] Conn. R. Superior Ct. § 5-12.
[56] Conn. R. Superior Ct. § 5-12(i).
[57] Council on Court Procedures, Amendments to the Oregon Rules of Civil Procedure (Dec. 10, 2022), *available at* https://councilonconcourtprocedures.org/Content/Promulgations/Amendments%20to%20the%20ORCP%20Promulgated%2012-10-2022.pdf.

now provides that a peremptory challenge may not be exercised on the basis of color, religion, sexual orientation, gender identity, or national origin.[58] The updated process for challenging a peremptory strike no longer references a *prima facie* case of an improper challenge, instead providing:

> (D)(4)(c) If there is an objection to the exercise of a peremptory challenge under this rule, the party exercising the peremptory challenge must articulate reasons supporting the peremptory challenge that are not discriminatory. The objecting party may then provide argument and evidence that the given reason is discriminatory or pretext for discrimination. An objection to a peremptory challenge must be sustained if the court finds that it is more likely than not that a protected status under paragraph D(4)(a) of this rule was a factor in invoking the peremptory challenge.
>
> D(4)(d) In making the determination under paragraph D(4)(c) of this rule, the court must consider the totality of the circumstances. The totality of the circumstances may include:
>
> D(4)(d)(i) whether the challenged prospective juror was questioned and the nature of those questions;
>
> D(4)(d)(ii) the extent to which the nondiscriminatory reason given could arguably be considered a proxy for a protected status or might be disproportionately associated with a protected status;
>
> D(4)(d)(iii) whether the party challenged the same juror for cause; and
>
> D(4)(d)(iv) any other factors, information, or circumstances considered by the court.[59]

Overall, Oregon provides an example of using less extensive rules changes than those approved in Washington to address concerns about jury selection.

New Jersey also recently evaluated its jury system. After a Judicial Conference on Jury Selection, an appointed Committee approved numerous reforms.[60] In tandem with these efforts, the Supreme Court of New Jersey adopted new Rule 1:8-3A in 2022, effective January 1, 2023 in both civil and criminal proceedings.[61] Rule 1:8-3A mirrors the process to object to peremptory strikes set forth in Washington Rule 37. The New Jersey Rule,

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[58] Or. R. Civ. P. 57D(4)(a).
[59] Or. R. Civ. P. 57.
[60] *See* Jury Reforms and Attorney-Conducted Voir Dire Pilot Program, https://www.njcourts.gov/attorneys/jury-reforms, (last visited May 7, 2024).
[61] *Id.*

however, uses "a reasonable, fully informed person" in place of "an objective observer."[62] Although the text of Rule 1:8-3A is much shorter and omits several sections found in the Washington Rule, the official comment to the Rule contains much of the omitted information and cites to both the Washington and Connecticut Rules.[63]

b. Expanding Peremptory Strike Procedure by Statute

California recently implemented through legislation reforms similar to the changes achieved by Rules in other states. Chapter 318, approved by the Governor of California on September 30, 2020, added new Section 231.7 to the California Code of Civil Procedure.[64] In detailing the motivation for this law, the bill provides:

> The Legislature finds that peremptory challenges are frequently used in criminal cases to exclude potential jurors from serving based on their race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups, and that exclusion from jury service has disproportionately harmed African Americans, Latinos, and other people of color. The Legislature further finds that the existing procedure for determining whether a peremptory challenge was exercised on the basis of a legally impermissible reason has failed to eliminate that discrimination.[65]

Section 231.7 clarifies that a peremptory challenge may not be based on "race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or the perceived membership of the prospective juror in any of those groups."[66] After an objection to a peremptory challenge is made, the party exercising the challenge must state reasons for the challenge.[67] After considering "the totality of the circumstances," the objection is sustained if the court determines "there is a substantial likelihood that an objectively reasonable person would view race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in

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[62] N.J. R. Ct. 1:8-3A.
[63] *See id.* at Official Comment (July 12, 2022).
[64] Chp. 318 (A.B. 3070), 2019-20 Reg. Sess. (Cal. 2020), *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3070.
[65] *Id.*
[66] Cal. Civ. Proc. Code § 231.7(a) (West 2024). § 231.7 is attached as **Exhibit G**.
[67] *Id.* at (c).

any of those groups, as a factor in the use of the peremptory challenge."[68] A finding of purposeful discrimination is not needed to sustain an objection.[69]

The statute also defines key terms, including "substantial likelihood" and "unconscious bias," and lists numerous circumstances for a court to consider when ruling on an objection.[70] Similar to the new rules addressing peremptory challenges in other states, the California statute also lists multiple circumstances in which "[a] peremptory challenge for any of the following reasons is presumed to be invalid unless the party exercising the peremptory challenge can show by clear and convincing evidence that an objectively reasonable person would view the rationale as unrelated to a prospective juror's race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups, and that the reasons articulated bear on the prospective juror's ability to be fair and impartial in the case."[71]

The provisions of Section 231.7 do not apply to civil cases in California until January 1, 2026.[72] Overall, the legislative activity in California demonstrates that, in addition to rule making procedures, changes to jury selection may be completed by statute.

c. Elimination of Peremptory Strikes

In contrast to the reforms to peremptory strikes enacted by other states, Arizona has taken the path recommended by the EJC Report and eliminated all peremptory strikes in civil and criminal jury trials. In 2021, the Co-Chairs of the *Batson* Working Group petitioned the Supreme Court of Arizona to adopt a new rule modeled after Washington Rule 37.[73]

While the petition of the committee was pending, Peter B. Swann, Chief Judge of the Arizona Court of Appeals, Division I, and Paul J. McMurdie, Judge of the Arizona Court of Appeals, Division I, petitioned the Supreme Court to instead eliminate all peremptory challenges.[74] The petitioners asserted that

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[68] *Id.* at (d)(1).
[69] *Id.*
[70] *Id.* at (d)(2).
[71] *Id.* at (e).
[72] *See* Chp. 318 (A.B. 3070), 2019-20 Reg. Sess. (Cal. 2020), *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3070.
[73] Petition to Amend the Rules of the Supreme Court of Arizona to Adopt Rule 24 – Jury Selection, No. R-21-0008 (Ariz. Sup. Ct. Jan. 8, 2021). A copy of the petition and comments may be accessed at https://www.azcourts.gov/Rules-Forum/aft/1196.
[74] Petition to Amend Rules 18.4 and 18.5 of Rules of Criminal Procedure and Rule 47(e) of the Arizona Rules of Civil Procedure, No. R-21-0020 (Ariz. Sup. Ct. Jan. 11, 2021). A copy of the petition and comments may be accessed at https://www.azcourts.gov/Rules-Forum/aft/1208.

peremptory strikes are "the primary tool by which discrimination is practiced" and noted that "[s]tudy after study shows that peremptories are exercised in a discriminatory fashion in states throughout the United States."[75] The petitioners argued that the changes made in Washington and California are "too nuanced to achieve their desired effect in the real world."[76] Accordingly, the petitioners requested that the Arizona Supreme Court modify the current rules to delete references to peremptory challenges.

In August 2021, the Arizona Supreme Court granted the petition requesting elimination of peremptory challenges.[77] The Court also recognized that the jury selection process may require other reforms and directed Arizona's Task Force on Jury Data Collection, Practices, and Procedures to consider other needed changes.[78] The recommendations of the Task Force included amendments to rules and comments that:

- Encourage case-specific written juror questionnaires when feasible;
- Permit extended oral voir dire with increased participation from the parties and an emphasis on open-ended questions;
- Discourage attempts by the trial judge to rehabilitate prospective jurors through leading, conclusory questioning;
- Respect for the difference in summoning practices of each court;
- Maintain proportionality in the length of jury selection to the complexity of the case;
- Ensure a comprehensive record of all case-specific answers provided during voir dire; and
- Maintain juror privacy.[79]

A petition was filed with the Arizona Supreme Court in November 2021 requesting related amendments to the rules.[80] After the Court adopted amendments on a temporary, emergency basis, certain changes were

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[75] *Id.* at 2, 9.
[76] *Id.* at 3.
[77] Order Amending Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure, No. R-21-0020 (Ariz. Sup. Ct. Aug. 30, 2021).
[78] *See id.*; *Criminal Procedure - Jury Selection - Arizona Supreme Court Abolishes Peremptory Strikes in Jury Selection - Order Amending Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure*, 135 Harv. L. Rev. 2243, 2246-47 (Jun. 2022).
[79] Statewide Jury Selection Workgroup: A Workgroup of the Task Force on Jury Data Collection, Practices, and Procedures, Report and Recommendations at 3 (Nov. 1, 2021).
[80] Petition to Amend Rules of Criminal Procedure 16.3, 18.3, 18.4 & 18.5; Rules of Civil Procedure 16 & 47; Justice Court Rule of Civil Procedure 134; and Rule of Procedure for Eviction Actions 12, No. R-21-0045 (Ariz. Sup. Ct. Nov. 23, 2021). A copy of the petition and comments may be accessed at https://www.azcourts.gov/Rules-Forum/aft/1268.

permanently adopted in August 2022 after the conclusion of a comment period.[81]

Overall, it does not appear that empirical data is yet available regarding the impact of eliminating peremptory strikes in all cases. The Arizona process demonstrates that, if peremptory challenges are eliminated, additional amendments to rules may prove necessary to maintain the efficacy of the jury selection process.

Who Conducts Voir Dire

A. Maryland Law

Another issue concerning the jury selection process involves who may ask questions of the panel. In regard to who may conduct the *voir dire*, Maryland Rules 2-512 and 4-312 both provide:

> The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after considering questions proposed by the parties. If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties.

Accordingly, the current Rules permit the examination of qualified jurors to be conducted by either the court, the parties, or both.

The NCSC's 2007 State-of-the-States Survey of Jury Improvement Efforts ("the 2007 Survey") ranked states by survey results concerning who questioned potential jurors during *voir dire*.[82] A score of 1 reflected most judge-dominated *voir dire*, while a score of 5 reflected most attorney-dominated *voir dire*.[83] Maryland had an average score of 1.75, the sixth lowest score.[84] Therefore, although attorneys in Maryland may technically be permitted to conduct *voir dire*, it appears that most examination is completed by a judge.

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[81] Order Adopting on a Permanent Basis Amendments to Rules 16.3, 18.3, 18.4, and 18.5; Rules of Criminal Procedure; Rules 16 and 47, Rules of Civil Procedure; Rule 134, Justice Court Rules of Civil Procedure; and Rule 12, Rules of Procedure for Eviction Actions, No. R-21-0045 (Ariz. Sup. Ct. Aug. 29, 2022).
[82] Hon. Gregory E. Mize, Paula Hannaford-Agor, J.D., & Nicole L. Waters, Ph.D., The State-of-the-States Survey of Jury Improvement Efforts: A Compendium Report (Apr. 2007).
[83] *Id.* at 79.
[84] *Id.*

B. National Trends

The 185th Report of the Rules Committee relied on data from the 2007 Survey about the differing jury selection and other processes found throughout the country. Since 2007, NCSC has updated its survey with data collected between 2018 and 2023 and published a new State-of-the-States Survey of Jury Improvement Efforts in 2023 ("the 2023 Survey").[85]

The 2023 Survey has been updated to reflect more recent developments in who typically conducts *voir dire* examination. Comparing the results of the 2007 Survey to the 2023 Survey results, there was "a slight decline in the percentage of exclusive-attorney *voir dire* without the judge present, a practice mostly confined to civil trials in New York City and parts of Pennsylvania."[86] In addition, consistent with the 2007 Survey, "judges dominated voir dire in only 21% of trials in state courts compared to 63% in federal courts."[87]

The 2023 Survey also noted a "shift toward more equal voir dire participation by judges and attorneys in the 2023 Survey compared to 2007 in both state and federal courts."[88] Based on the survey response, the percentage of judge-dominated *voir dire* declined from 26% to 21%, while the percentage of attorney-dominated *voir dire* declined from 55% to 49%.[89] The percentage of *voir dire* conducted by both judges and attorneys equally, however, increased from 19% to 30% in the state courts.[90] The changes in federal court were less pronounced, but demonstrated similar decrease in judge-dominated *voir dire*. Overall, the trends suggest increasing attorney participation in *voir dire*.

Changes in certain states also reflect the trends demonstrated by the 2023 Survey. Effective January 1, 2024, Michigan Court Rule of Civil Procedure 2.511 was amended to alter the jury examination process.[91] The prior version of the Rule provided that the court may conduct pr permit the attorneys to conduct *voir dire*.[92] The new language still permits the court or the attorneys to examine prospective jurors, but requires the court to permit

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[85] Paula Hannaford-Agor, J.D., MPP & Morgan Moffett, MPP, 2023 State-of-the-States Survey of Jury Improvement Efforts (2023). Additional information about the State-of-States Survey of Jury Improvement Efforts, as well as a copy of the 2023 Survey, is available at https://www.ncsc-jurystudies.org/state-of-the-states/state-of-states-survey. A copy of the 2023 Survey is attached as **Exhibit H.**

[86] *Id.* at 9.

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.* at 10.

[91] Order, AMD File No. 2022-11 (Mich. Sup. Ct. Sept. 20, 2023), *available at* https://www.courts.michigan.gov/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2022-11_2023-09-20_formor_amdmcr2.511-6.412.pdf.

[92] *See id.*

the attorneys to ask or submit further questions if the court conducts the examination.[93] An identical change was made to Michigan Rule 6.412 concerning jury selection in criminal cases.[94] A Staff Comment to the 2024 Amendment explains, "The amendments of MCR 2.511(C) and 6.412(C) align with [Fed. R. Crim. P. 24] and [Fed. R. Civ. P. 47] and require the court to allow the attorneys or parties to conduct voir dire in civil and criminal proceedings if the court examines the prospective jurors. The requirement is subject to the court's determination that the parties' or attorneys' questions are proper."[95]

As noted *supra,* New Jersey also has recently considered jury reforms.[96] As part of these reforms, by Order entered July 12, 2022, the Supreme Court of New Jersey noted that "New Jersey is one of only a handful of state court jurisdictions that continue to use a judge-led system of voir dire" and authorized a pilot program to test attorney-conducted *voir dire.*[97] On March 13, 2023, a notice was issued expanding the pilot program to another county.[98]

In summary, trends across the nation suggest that attorneys are taking a more active role in the jury selection process.

QUESTIONS FOR THE RULES COMMITTEE

What, if any, changes should be made to the current jury selection process in Maryland?

- Expansion of *voir dire* to allow parties to obtain information to inform the intelligent exercise of peremptory challenges?
- Elimination or modification of peremptory challenges?
- Implementation of other recommendations in the 185th Report of the Rules Committee?
- Other?

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[93] *See* Mich. Ct. R. Civ. Pro. 2.511(c).
[94] *See* Mich. Ct. R. Crim. Pro. 6.412(C)(2).
[95] *Supra* note 91.
[96] *See supra* note 60.
[97] New Jersey Judiciary Pilot Program for Attorney-Conducted Voir Dire – For Implementation on or After September 1, 2022 (N.J. Jul. 12, 2022), *available at* https://www.njcourts.gov/sites/default/files/courts/supreme/part4of4-orderauthorizingacvdpilotprogram-07-12-22_0.pdf.
[98] Notice – Attorney-Conducted Voir Dire (ACVD) – Expansion of Pilot Program (Mar. 13, 2023), *available at* https://www.njcourts.gov/notices/notice-attorney-conducted-voir-dire-acvd-expansion-pilot-program-monmouth-county-effective.

AGENDA ITEM 2

THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. ALAN M. WILNER, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
COLBY L. SCHMIDT, Deputy Reporter
HEATHER COBUN, Assistant Reporter
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MEMORANDUM

TO : Members of the Rules Committee

FROM : Heather Cobun, Esq., Assistant Reporter

DATE : May 7, 2024

RE : Servicemembers Civil Relief Act and Judgment Collections

In a memorandum opinion issued on March 20, 2024, the U.S. District Court for the District of Maryland ruled that collection activities, such as a subpoena to a financial institution or a writ of garnishment, constitute "judgments" for the purposes of the Servicemembers Civil Relief Act (50 U.S.C. § 3910 *et. seq.*) ("the SCRA"). Chief Justice Fader has requested that the Rules Committee consider and propose changes to the Rules potentially impacted by the decision.

The SCRA provides various protections to military servicemembers and applies to certain contracts, agreements, and civil judicial proceedings. Before entering judgment in "any civil action or proceeding," a court must require the plaintiff to file an affidavit "stating whether or not the defendant is in military service and showing necessary facts to support the affidavit" or that the plaintiff is unable to determine whether the defendant is in military service (see 50 U.S.C. § 3931 (b)(1)). If the defendant appears to be in military service, the court may not enter a judgment until after the court appoints an attorney to represent the servicemember. The SCRA contains provisions for staying or vacating execution of a judgment if the servicemember "is materially affected by reason of military service in complying with a court judgment or order" (see 50 U.S.C. § 3934 (a)).

Rouse v. Moore

The plaintiffs in *Rouse v. Moore* (Civ. No. JKB-22-00129), which currently is pending in the U.S. District Court for the District of Maryland, are three military couples with one spouse on active military duty at all relevant times. The couples did not have any ties to Maryland, but judgments issued against them in other states were enrolled in Maryland by a creditor using the Uniform Enforcement of Foreign

Judgments Act (Code, Courts Article, § 11-801 through 11-807). The judgments from the other states allegedly were invalid. The couples settled their claims against the creditor, who originally was named in the lawsuit. To enforce the judgments, the creditor had requested writs of garnishment and, in one case, requested and served on financial institutions multiple subpoenas seeking information about financial accounts.

The opinion in *Rouse* held that:

1) The SCRA is implicated when a judgment creditor seeks to utilize subpoena and garnishment procedures under the Maryland Rules, and
2) Prior to issuing a subpoena or writ of garnishment, the court must require the creditor to submit an affidavit regarding the debtor's military status and, if the debtor is a servicemember, appoint counsel for the debtor.

The Chief Justice requested that the Committee consider and propose changes to Rules implicated by the opinion. Although the facts of the *Rouse* case involve collection of foreign judgments through the issuance of subpoenas to financial institutions and garnishments, the reasoning of the opinion is not limited to those circumstances. Under *Rouse*, any subpoena to a third party seeking confidential information about a debtor and any writ to enforce a judgment that issues in the clerk's office would qualify as a "judgment" requiring compliance with the SCRA.

Proposed Amendments[1]

To address the holding in *Rouse*, a series of amendments is proposed to require a military service affidavit accompany a request for any post-judgment writ governed by Title 2, Chapter 600 and Title 3, Chapter 600. The requirement is also added to Rules 2-633 and 3-633 governing an order to appear for post-judgment examination, which can result in a body attachment. Two new Rules – 2-640 and 3-640 – set forth a procedure for compliance by the clerk and the court if the creditor indicates that the debtor is or may be in the military. If the affidavit states that the debtor is not in the military, the requested writ or order may be issued as usual.

Regarding subpoenas, the opinion dealt with subpoenas to third parties that disclosed confidential financial information of the judgment debtor without a showing that the debtor is not in military service. One issue is that the creditor in the *Rouse* case appears to have used subpoenas improperly in the first place. A subpoena is defined in Rule 1-202 as "a written order or writ directed to a person and requiring

[1] The proposed amendments and new Rules are in "Rule Book" order and include Rule 2-510, new Rule 2-510.2, Rule 2-633, new Rule 2-640, Rule 2-641, Rule 2-645, Rule 2-646, Rule 2-647, Rule 3-510, new Rule 3-510.2, Rule 3-633, new Rule 3-640, Rule 3-641, Rule 3-645, Rule 3-646, and Rule 3-647. There are no amendments proposed to Rules 2-645.1 and 3-645.1, which govern garnishment of accounts in financial institutions, because those garnishments are generally governed by the provisions of 2-645 and 3-645, respectively, where the affidavit requirement is included.

attendance at a particular time and place to take the action specified therein." The creditor was using subpoenas not to compel appearance at a proceeding or deposition with documents, but instead to seek documents and information later used to request garnishments. This is not a permitted use of a subpoena under Rule 3-510 (a). The subpoena form has been amended since that time to clarify that it is to be used for the purpose of ordering a person to appear, and is not to be used purely to request documents, which is a permitted use under the Federal Rules of Civil Procedure (Fed. R. Civ. P. 45 (a)(1)(A)(iii)).

Even with a subpoena form that more clearly sets forth the permitted uses, the U.S. District Court's determination that a subpoena is a "judgment" under the SCRA needs to be addressed. A subpoena directed to the judgment debtor must be personally served, which does not present the same concerns as a subpoena for confidential information directed to a third party. When a subpoena for financial records is used properly to compel disclosure of financial information in connection with a proceeding, proposed new Rules 2-510.2 and 3-510.2 require that a military service affidavit be filed in the case for a subject not in military service. For a subject who is in military service, the subpoena must be requested from a judge, not the clerk.

Appointed Attorneys

If the Committee recommends and the Supreme Court adopts the proposed amendments and new Rules, the method of compliance – particularly with the attorney appointment requirement – is an open question.

The Judgments Subcommittee consulted with a Civil Legal Assistance attorney from the Fort Meade Judge Advocate General ("JAG") Office and a member of the MSBA Veterans' Affairs and Military Law section to learn more about SCRA representation. JAG does not provide full representation in civil matters but does offer free legal services and advice to servicemembers and their families. Current compliance in Maryland courts appears to be *ad hoc*, with attorneys taking SCRA cases at the request of the court on a *pro bono* or low-fee basis. The appointed attorney takes steps to locate the servicemember, ascertain if there is a valid defense to the action, reports back to the court, and files an answer or requests a stay under the Act.

Attached after the Rules for the Committee's review are:

- *Rouse v. Maryland* memorandum opinion dated March 20, 2024
- Relevant portions of the Servicemembers Civil Relief Act (50 U.S.C. § 3910 *et. seq.*)
- Maryland's Uniform Enforcement of Foreign Judgments Act (Code, Courts Article, § 11-801 through 11-807)
- Maryland District Court subpoena form

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-510 by adding a reference to new Rule 2-510.2 to section (b), as follows:

Rule 2-510. SUBPOENAS – COURT PROCEEDINGS AND DEPOSITIONS

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or tangible things at a court proceeding, including proceedings before a magistrate, auditor, or examiner; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(2) A subpoena may be used to compel a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(3) Except as otherwise permitted by law, a subpoena may not be used for any other purpose. If the court, on motion of a party or on its own initiative,

after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

~~A~~ Subject to the requirements of Rule 2-510.2, a subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

(1) On the request of any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed by the clerk, which the attorney shall fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3) of this Rule.

Committee note: This Rule does not apply to subpoenas issued under Code, Courts Article, Title 9, Subtitle 4 (Maryland Uniform Interstate Depositions and Discovery Act) requiring attendance at a deposition in this State. For subpoenas issued under that Act in conjunction with a deposition, see Rule 2-510.1. For discovery of documents, electronically stored information, and property from a party to an action pending in this State, other than in conjunction with a deposition, see Rule 2-422. For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(c) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description of the proposed testing or sampling procedure, (6) when required by Rule 2-412 (d), a notice to designate the person to testify, (7) the date of issuance, and (8) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60 days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, § 6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health--General Article, §§ 4-302 and 4-306(b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health--General Article, § 4-307 regarding mental health records; and Code, Financial Institutions Article, § 1-304.

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before a magistrate, auditor, or examiner)

or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or cost, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents, electronically stored information, or tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents, electronically stored information, or tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

A motion filed under this section based on a claim that information is privileged or subject to protection shall be supported by a description of the nature of each item that is sufficient to enable the demanding party to evaluate the claim.

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the

production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

(g) Duties Relating to the Production of Documents, Electronically Stored Evidence, and Other Property

(1) Generally

A person responding to a subpoena to produce documents, electronically stored information, or other property at a court proceeding or deposition shall:

(A) produce the documents or information as they are kept in the usual course of business or shall organize and label the documents or information to correspond with the categories in the subpoena; and

(B) produce electronically stored information in the form specified in the subpoena or, if a form is not specified, in the form in which the person ordinarily maintains it or in a form that is reasonably usable.

(2) Electronically Stored Information

A person responding to a subpoena to produce electronically stored information at a court proceeding or deposition need not produce the same electronically stored information in more than one form and may decline to produce the information on the ground that the sources are not reasonably accessible because of undue burden or cost. A person who declines to produce information on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the demanding party to evaluate the burdens and costs of complying with the subpoena and the likelihood of finding responsive information in the identified sources. Any motion relating to electronically stored information withheld on the ground that it is not reasonably accessible shall be decided in the manner set forth in Rule 2-402 (b).

(h) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201 (a) and 1-341.

(i) Records Produced by Custodians

(1) Generally

A custodian of records served with a subpoena to produce records at trial may comply by delivering the records to the clerk of the court that issued the subpoena at or before the time specified for production. The custodian may produce exact copies of the records designated unless the subpoena specifies that the original records be produced. The records shall be delivered in a sealed envelope labeled with the caption of the action, the date specified for production, and the name and address of the person at whose request the subpoena was issued. The records shall be accompanied by a certificate of the custodian that they are the complete records requested for the period designated in the subpoena and that the records are maintained in the regular course of business. The certification shall be prima facie evidence of the authenticity of the records.

Cross reference: Code, Health-General Article, § 4-306(b)(6); Code, Financial Institutions Article, § 1-304.

(2) During Trial

Upon commencement of the trial, the clerk shall release the records only to the courtroom clerk assigned to the trial. The courtroom clerk shall return the records to the clerk promptly upon completion of trial or at an earlier time if there is no longer a need for them. Upon final disposition of the action the

clerk shall return the original records to the custodian but need not return copies.

(3) Presence of Custodian

When the actual presence of the custodian of records is required, the subpoena shall state with specificity the reason for the presence of the custodian.

Cross reference: Code, Courts Article, § 10-104 includes an alternative method of authenticating medical records in certain cases transferred from the District Court upon a demand for a jury trial.

(j) Attachment

A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

(k) Information Produced that is Subject to a Claim of Privilege or Protection

(1) A party who receives a document, electronically stored information, or other property that the party knows or reasonably should know was inadvertently sent shall promptly notify the sender.

(2) Within a reasonable time after information is produced in response to a subpoena that is subject to a claim of privilege or protection, the person who produced the information shall notify each party who received the information of the claim and the basis for it. A party who wishes to determine the validity of a claim of privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to Rule 2-402 (e)(5), shall promptly file a motion under seal requesting that the court determine the validity of the claim. A party in possession of information that is the subject of the motion shall appropriately preserve the information pending a ruling. A receiving party may not use or disclose the information until the claim is resolved and shall take reasonable steps to retrieve any information the receiving party disclosed before being notified.

Cross reference: See Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct. For issuing and enforcing legislative subpoenas, see Code, State Government Article, §§ 2-1802 and 2-1803.

Source: This Rule is derived as follows:
Section (a) is new but the first and second sentences are derived in part from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(C); the second sentence also is derived in part from former Rule 407 a.
Section (b) is new.
Section (c) is derived from former Rules 114 a and b, 115 a and 405 a 2 (b), and from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(D).
Section (d) is derived from former Rules 104 a and b and 116 b. Section (e) is derived from former Rule 115 b and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).
Section (f) is derived from the 1980 version of Fed. R. Civ. P. 45 (d)(1), and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).
Section (g) is new and is derived from the 2006 version of Fed. R. Civ. P. 45 (d)(1).
Section (h) is derived from the 1991 version of Fed. R. Civ. P. 45 (c)(1).
Section (i) is new.

Section (j) is derived from former Rules 114 d and 742 e.
Section (k) is new and is derived in part from the 2006 version of Fed. R. Civ. P. 45 (d)(2)(B).

REPORTER'S NOTE

The proposed amendment to Rule 2-510 adds to section (b) a condition that issuance of a subpoena is subject to Rule 2-510.2. That proposed new Rule adds additional requirements for a subpoena to a financial institution compelling production of financial information or information derived from financial records pursuant to Code, Financial Institutions Article, § 1-304. See the Reporter's note to Rule 2-510.2.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

ADD NEW Rule 2-510.2, as follows:

Rule 2-510.2. SUBPOENAS – FINANCIAL INFORMATION

(a) Applicability

This Rule applies to a subpoena compelling production of financial information or information derived from financial records as authorized by Code, Financial Institutions Article, § 1-304.

Committee note: Code, Financial Institutions Article, § 1-304, permits a financial institution to disclose or produce financial records or information derived from financial records in compliance with a subpoena only if the subpoena contains a certification either that a copy has been served on the person whose records are sought or that service is waived by the court for good cause.

(b) Military Service Affidavit

(1) Requirement

A person entitled to issuance of a subpoena shall complete a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* as to the individual whose information or records is sought by the subpoena.

(2) If Individual is Not in Military Service

If the individual whose information or records is sought is not in military service, the person entitled to issuance of a subpoena shall:

(A) file the completed military service affidavit in the action; and

(B) request issuance of the subpoena pursuant to Rule 2-510.

(2) If Individual is or May be in Military Service

(A) Request; Referral to Judge

If the individual whose information or records is sought is in military service or the requester cannot determine whether the defendant is in military service, the person entitled to issuance of a subpoena shall file a request for issuance of a subpoena accompanied by the completed military service affidavit. The request shall be referred to a judge.

(B) Action by Court

If the court determines that the individual whose information or records is sought is in the military service, the court shall appoint an attorney for the individual and proceed under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*. If the court is unable to determine whether the individual is in military service, the court may enter an order pursuant to 50 U.S.C. § 3931 (b)(3).

(C) Issuance of Subpoena

After referral of the request to a judge, the clerk may issue the requested subpoena upon order of court.

Source: This Rule is new.

REPORTER'S NOTE

In a memorandum opinion issued on March 20, 2024, the U.S. District Court for the District of Maryland ruled in *Rouse v. Moore* (Civ. No. JKB-22-00129) that collection activities, such as a subpoena to a financial institution or a writ of garnishment, constitute "judgments" for the purposes of the Servicemembers Civil Relief Act (50 U.S.C. § 3910 *et. seq.*) ("the SCRA"). Chief Justice Fader requested that the Rules Committee consider and propose changes to the Rules potentially impacted by the decision.

Proposed new Rule 2-510.2 governs subpoenas to financial institutions compelling production of financial information or information derived from financial records pursuant to Code, Financial Institutions Article, § 1-304. The Rule requires a military service affidavit be filed prior to issuance of a subpoena and creates a procedure for review by a judge if the affidavit indicates that the individual whose financial information is being sought is in military service.

Section (a) sets forth the applicability of the proposed Rule. A Committee note states the requirements of the Financial Institutions statute.

Section (b) requires a person who requests a subpoena to a financial institution to complete a military service affidavit. If the individual is not in military service, the affidavit must be filed in the relevant action and the subpoena may then issue in accordance with Rule 2-510. If the individual is or may be in military service, the request for a subpoena must be forwarded to a judge for review and compliance with the SCRA. The subpoena may only be issued by court order once referred to a judge.

The same amendments are recommended to comparable provisions in Title 3.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-633 by adding a reference to new Rule 2-640 to subsection (b)(1), by adding to subsection (b)(1) a requirement that a request for examination be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 2-633. DISCOVERY IN AID OF ENFORCEMENT

(a) Methods

Except as otherwise provided in Rule 2-634, a judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of depositions, interrogatories, and requests for documents, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rules 2-411(d) and 2-421(a) apply separately to each. Thus, a second deposition of an individual previously deposed before the entry of judgment may be taken after the entry of judgment without leave of court. A second post-judgment deposition of that individual, however, would require leave of court. *Melnick v. New Plan Realty*, 89 Md. App. 435 (1991). Furthermore, leave of court is not required under Rule 2-421 to serve interrogatories on a judgment debtor solely because 30 interrogatories were served upon that party before the entry of judgment.

(b) Examination before a ~~judge~~ Judge or an ~~examiner~~ Examiner

(1) Generally

Subject to section (c) of this Rule and Rule 2-640, on request of a judgment creditor filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded shall issue an order requiring the appearance for examination under oath before a judge or examiner of (A) the judgment debtor, or (B) any other person who may have property of the judgment debtor, be indebted for a sum certain to the judgment debtor, or have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor. The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

(2) Order

(A) The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in (i) the issuance of a body attachment directing a law enforcement officer to take the person served into custody and bring that person before the court and (ii) the person served being held in contempt of court.

Cross reference: See Rule 1-361.

(B) The order shall be served upon the judgment debtor or other person in the manner provided by Rule 2-121, but no body attachment shall issue in the event of a non-appearance absent a determination by the court that (i) the person to whom the order was directed was personally served with the order in

the manner described in Rule 2-121 (a)(1) or (3), or (ii) that person has been evading service willfully, as shown by a particularized affidavit based on personal knowledge of a person with firsthand knowledge.

(3) Sequestration

The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross reference: Code, Courts Article, §§ 6-411 and 9-119.

(c) Subsequent Examinations

After an examination of a person has been held pursuant to section (b) of this Rule, a judgment creditor may obtain additional examinations of the person in accordance with this section. On request of the judgment creditor, if more than one year has elapsed since the most recent examination of the person, the court shall order a subsequent appearance for examination of the person. If less than one year has elapsed since the most recent examination of the person, the court may require a showing of good cause.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 627.
Section (b) is in part new and in part derived from former Rule 628 b.
Section (c) is new.

REPORTER'S NOTE

In a memorandum opinion issued on March 20, 2024, the U.S. District Court for the District of Maryland ruled in *Rouse v. Moore* (Civ. No. JKB-22-00129) that collection activities, such as a subpoena to a financial institution or a writ of garnishment, constitute "judgments" for the purposes of the Servicemembers Civil Relief Act (50 U.S.C. § 3910 *et. seq.*) ("the SCRA"). Chief

Justice Fader requested that the Rules Committee consider and propose changes to the Rules potentially impacted by the decision.

Proposed amendments to Rule 2-633 address the decision by requiring a military service affidavit be filed before a court orders post-judgment examination before a judge or examiner. The issuance of the order is subject to new Rule 2-640, which sets forth the procedure when the affidavit indicates that the judgment debtor is or may be in military service. See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

ADD NEW Rule 2-640, as follows:

Rule 2-640. ENFORCEMENT PROCEDURES – JUDGMENT DEBTOR IN MILITARY SERVICE

(a) Applicability

This Rule applies to a request for issuance of:

(1) a writ of execution pursuant to Rule 2-641;

(2) a writ of garnishment pursuant to Rule 2-645, Rule 2-645.1, or 2-646;

(3) a writ enforcing a judgment awarding possession pursuant to Rule 2-647; and

(4) an order directing a judgment debtor to appear for an examination pursuant to Rule 2-633 (b).

(b) If Judgment Debtor is Not in Military Service

If a military service affidavit required to be submitted with a request described by section (a) of this Rule indicates that the judgment debtor is not in military service, the writ or order shall be issued as of course.

(c) If Judgment Debtor is or May be in Military Service

(1) Referral to Judge

If a military service affidavit required to be submitted with a request described by section (a) of this Rule indicates that the judgment debtor is in military service or that the creditor is unable to determine whether the debtor is in military service, the clerk shall refer the request to a judge.

(2) Action by Court

If the court determines that the judgment debtor is in the military service, the court shall appoint an attorney for the debtor and proceed under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* If the court is unable to determine whether the judgment debtor is in military service, the court may enter an order pursuant to 50 U.S.C. § 3931 (b)(3).

(3) Issuance of Writ

For a request for issuance of a writ, after referral of the request to a judge, the clerk may issue the requested writ upon order of court.

Source: This Rule is new.

REPORTER'S NOTE

In a memorandum opinion issued on March 20, 2024, the U.S. District Court for the District of Maryland ruled in *Rouse v. Moore* (Civ. No. JKB-22-00129) that collection activities, such as a subpoena to a financial institution or a writ of garnishment, constitute "judgments" for the purposes of the Servicemembers Civil Relief Act (50 U.S.C. § 3910 *et. seq.*) ("the SCRA"). Chief Justice Fader requested that the Rules Committee consider and propose changes to the Rules potentially impacted by the decision.

The SCRA requires, in part, that a plaintiff seeking entry of a judgment against a defendant submit to the court an affidavit regarding the defendant's military service. Many mechanisms to collect on a judgment, such as writs of garnishment and execution, generally issue from the clerk's office without

review by a judge. Proposed amendments to Rules 2-633, 2-641, 2-645, 2-645.1, 2-646, and 2-647 require a military service affidavit to be filed with a request pursuant to those Rules.

Proposed new Rule 2-640 sets forth a procedure for compliance by the clerk and the court if the creditor indicates that the debtor is or may be in the military. If the affidavit indicates that the debtor is not in military service, the requested writ or order shall issue as usual. If the affidavit indicates that the debtor is in military service or the creditor cannot determine whether the debtor is in military service, the clerk is instructed to refer the request to a judge for compliance with the SCRA.

The same changes – new Rule 3-640 and amendments to Rules 3-633, 3-641, 3-645, 3-646, and 3-647 – are proposed in Title 3.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-641 by adding by adding a reference to new Rule 2-640 to section (a), by adding to section (a) a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 2-641. WRIT OF EXECUTION – ISSUANCE AND CONTENT

(a) Generally

Upon the written request of a judgment creditor and subject to Rule 2-640, the clerk of a court where the judgment was entered or is recorded shall issue a writ of execution directing the sheriff to levy upon property of the judgment debtor to satisfy a money judgment. The writ shall contain a notice advising the debtor that federal and state exemptions may be available and that there is a right to move for release of the property from the levy. The request shall include or be accompanied by (1) a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* and (2) instructions to the sheriff that shall specify ~~(1)~~(A) the judgment debtor's last known address, ~~(2)~~(B) the judgment and the amount owed under the judgment, ~~(3)~~(C) the property to be levied upon and its location, and ~~(4)~~(D) whether the sheriff is to leave the levied property where found, or to

exclude others from access to it or use of it, or to remove it from the premises. The judgment creditor may file additional instructions as necessary and appropriate and deliver a copy to the sheriff. More than one writ may be issued on a judgment, but only one satisfaction of a judgment may be had.

(b) Issuance to Another County

If a judgment creditor requests the clerk of the court where the judgment was entered to issue a writ of execution directed to the sheriff of another county, the clerk shall send to the clerk of the other county the writ, the instructions to the sheriff, and, if not already recorded there, a certified copy of the judgment for recording.

(c) Transmittal to Sheriff; Bond

Upon issuing a writ of execution or receiving one from the clerk of another county, the clerk shall deliver the writ and instructions to the sheriff. The sheriff shall endorse on the writ the exact hour and date of its receipt and shall maintain a record of actions taken pursuant to it. If the instructions direct the sheriff to remove the property from the premises where found or to exclude others from access to or use of the property, the sheriff may require the judgment creditor to file with the sheriff a bond with security approved by the sheriff for the payment of any expenses that may be incurred by the sheriff in complying with the writ.

Cross reference: For execution of a judgment against the property of a corporation, joint stock company, association, limited liability company, limited liability partnership, or limited liability limited partnership for the amount of

fines or costs awarded against it in a criminal proceeding, see Code, Criminal Procedure Article, § 4-203.

Source: This Rule is derived as follows:
Section (a) is in part new and in part derived from former Rules G40 b 4, the last sentence of G49 a, and 622 e.
Section (b) is in part new and in part derived from former Rule 622 h 1 and 3.
Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-645 by adding by adding a reference to new Rule 2-640 to section (b), by adding to section (b) a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 2-645. GARNISHMENT OF PROPERTY – GENERALLY

(a) Availability

Subject to the provisions of Rule 2-645.1, this Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 2-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property includes any debt owed to the judgment debtor, whether immediately payable or unmatured.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was entered a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of each judgment debtor with respect to whom a writ is requested, and (4) the name and address of the garnishee. <u>The request shall include or be accompanied by a military service affidavit in</u>

compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* Upon the filing of the request and subject to Rule 2-640, the clerk shall issue a writ of garnishment directed to the garnishee.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) direct the garnishee to hold, subject to further proceedings or to termination of the writ, the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ,

(3) notify the garnishee of the time within which the answer must be filed and that the failure to do so may result in judgment by default against the garnishee,

(4) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(5) notify the judgment debtor of the right to contest the garnishment by filing a motion asserting a defense or objection, and

(6) notify the judgment debtor that, if the garnishee files an answer pursuant to section (e) of this Rule and no further filings concerning the writ of garnishment are made with the court within 120 days following the filing of the

answer, the garnishee may file a notice of intent to terminate the writ of garnishment pursuant to subsection (k)(2) of this Rule.

Committee note: A writ of garnishment may direct a garnishee to hold the property of more than one judgment debtor if the name and address of each judgment debtor whose property is sought to be attached is stated in the writ.

(d) Service

The writ shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Promptly after service upon the garnishee, the person making service shall mail a copy of the writ to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 2-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Answer of Garnishee

The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall admit or deny that the garnishee is indebted to the judgment debtor or has possession of property of the judgment debtor and shall specify the amount and nature of any debt and describe any property. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the judgment debtor could assert. After answering, the garnishee may pay any garnished indebtedness into court and may deliver to the sheriff any garnished property, which shall then be

treated as if levied upon by the sheriff. A garnishee who has filed an answer admitting indebtedness to the judgment debtor or possession of property of the judgment debtor is not required to file an amended answer solely because of an increase in the garnishee's indebtedness to the judgment debtor or the garnishee's receipt of additional property of the debtor.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the judgment creditor may proceed pursuant to Rule 2-613 for a judgment by default against the garnishee.

(g) When Answer Filed

If the garnishee files a timely answer, the matters set forth in the answer shall be treated as established for the purpose of the garnishment proceeding unless the judgment creditor files a reply contesting the answer within 30 days after its service. If a timely reply is not filed, the court may enter judgment upon request of the judgment creditor, the judgment debtor, or the garnishee. If a timely reply is filed to the answer of the garnishee, the matter shall proceed as if it were an original action between the judgment creditor as plaintiff and the garnishee as defendant and shall be governed by the rules applicable to civil actions.

(h) Interrogatories to Garnishee

The judgment creditor may serve interrogatories directed to the garnishee pursuant to Rule 2-421. The interrogatories shall contain a notice to the

garnishee that, unless answers are served within 30 days after service of the interrogatories or within the time for filing an answer to the writ, whichever is later, the garnishee may be held in contempt of court. The interrogatories shall also inform the garnishee that the garnishee must file a notice with the court pursuant to Rule 2-401 (d) at the time the answers are served. If the garnishee fails to serve timely answers to interrogatories, the court, upon petition of the judgment creditor and proof of service of the interrogatories, may enter an order in compliance with Rule 15-206 treating the failure to answer as a contempt and may require the garnishee to pay reasonable attorney's fees and costs.

(i) Release of Property; Claim by Third Person

Before entry of judgment, the judgment debtor may seek release of the garnished property in accordance with Rule 2-643, except that a motion under Rule 2-643 (d) shall be filed within 30 days after service of the writ of garnishment on the garnishee. Before entry of judgment, a third person claimant of the garnished property may proceed in accordance with Rule 2-643 (e).

(j) Judgment

The judgment against the garnishee shall be for the amount admitted plus any amount that has come into the hands of the garnishee after service of the writ and before the judgment is entered, but not to exceed the amount owed under the creditor's judgment against the debtor and enforcement costs.

(k) Termination of Writ

(1) Upon Entry of Judgment

Upon entry of a judgment against the garnishee pursuant to section (j) of this Rule, the writ of garnishment and the lien created by the writ shall terminate and the garnishee shall be under no obligation to hold any additional property of the debtor that may come into its possession after the judgment was entered.

(2) By the Garnishee

If the garnishee has filed an answer and no further filing concerning the writ of garnishment is made within 120 days after the filing of the answer, the garnishee may file, at any time more than 120 days after the filing of the answer, a notice of intent to terminate the writ of garnishment. The notice shall (A) contain a statement that a party may object to termination of the writ by filing a response within 30 days after service of the notice and (B) be served on the judgment debtor and the judgment creditor. If no response is filed within 30 days after service of the notice, the garnishee may file a termination of the garnishment, which shall release the garnishee from any further obligation to hold any property of the debtor.

Committee note: The methods of termination of a writ of garnishment provided in section (k) of this Rule are not exclusive. Section (k) does not preclude a garnishee or other party from filing a motion for a court order terminating a writ of garnishment on any other appropriate basis.

(l) Statement of Satisfaction

Upon satisfaction by the garnishee of a judgment entered against it pursuant to section (j) of this Rule, the judgment creditor shall file a statement of satisfaction setting forth the amount paid. If the judgment creditor fails to file the statement of satisfaction, the garnishee may proceed under Rule 2-626.

Source: This Rule is derived as follows:
Section (a) is new but is consistent with former Rules G47 a and G50 a.
Section (b) is new.
Section (c) is new.
Section (d) is in part derived from former Rules F6 c and 104 a (4) and is in part new.
Section (e) is in part new and in part derived from former Rule G52 a and b.
Section (f) is new.
Section (g) is new.
Section (h) is derived from former Rule G56.
Section (i) is new.
Section (j) is new.
Section (k) is new.
Section (l) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-646 by adding by adding a reference to new Rule 2-640 to section (b), by adding to section (b) a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 2-646. GARNISHMENT OF WAGES

(a) Applicability

This Rule governs garnishment of wages under Code, Commercial Law Article, §§ 15-601 through 15-606.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was obtained a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of the judgment debtor, and (4) the name and address of the garnishee. The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* Upon filing of the request and subject to Rule 2-640, the clerk shall issue a writ of garnishment directed to the garnishee together with a blank answer form provided by the clerk.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) notify the garnishee of the time within which the answer must be filed and that failure to do so may result in the garnishee being held in contempt,

(3) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(4) notify the judgment debtor of the right to contest the garnishment of wages by filing a motion asserting a defense or objection.

(d) Service

The writ and answer form shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Upon issuance of the writ, a copy of the writ shall be mailed to the debtor's last known address. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Response of Garnishee and Debtor

The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall state whether the debtor is an employee of the garnishee and, if so, the rate of pay and the existence of prior liens. The garnishee may assert any defense that the garnishee may have to the

garnishment, as well as any defense that the debtor could assert. The debtor may file a motion at any time asserting a defense or objection.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the court on motion of the creditor may order the garnishee to show cause why the garnishee should not be held in contempt and required to pay reasonable attorney's fees and costs.

(g) When Answer Filed

If the answer denies employment, the clerk shall dismiss the proceeding against the garnishee unless the creditor files a request for hearing within 15 days after service of the answer. If the answer asserts any other defense or if the debtor files a motion asserting a defense or objection, a hearing on the matter shall be scheduled promptly.

(h) Interrogatories to Garnishee

Interrogatories may be served on the garnishee by the creditor in accordance with Rule 2-645(h).

(i) Withholding and Remitting of Wages

While the garnishment is in effect, the garnishee shall withhold all garnishable wages payable to the debtor. If the garnishee has asserted a defense or is notified that the debtor has done so, the garnishee shall remit the withheld wages to the court. Otherwise, the garnishee shall remit them to the creditor or the creditor's attorney within 15 days after the close of the debtor's last pay period in each month. The garnishee shall notify the debtor of the

amount withheld each pay period and the method used to determine the amount. If the garnishee is served with more than one writ for the same debtor, the writs shall be satisfied in the order in which served.

(j) Duties of the Creditor

(1) Payments received by the creditor shall be credited first against accrued interest on the unpaid balance of the judgment, then against the principal amount of the judgment, and finally against attorney's fees and costs assessed against the debtor.

(2) Within 15 days after the end of each month in which one or more payments are received from any source by the creditor for the account of the debtor, the creditor shall mail to the garnishee and to the debtor a statement disclosing the payments and the manner in which they were credited. The statement shall not be filed in court, but creditor shall retain a copy of each statement until 90 days after the termination of the garnishment proceeding and make it available for inspection upon request by any party or by the court.

(3) If the creditor fails to comply with the provisions of this section, the court upon motion may dismiss the garnishment proceeding and order the creditor to pay reasonable attorney's fees and costs to the party filing the motion.

(k) Termination of Garnishment

A garnishment of wages terminates 90 days after cessation of employment unless the debtor is reemployed by the garnishee during that period.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule F6 a.

Section (b) is new.
Section (c) is in part derived from former Rule F6 b and in part new.
Section (d) is in part derived from former Rule F6 c and in part new.
Section (e) is derived from former Rule F6 d and k.
Section (f) is derived from former Rule F6 f.
Section (g) is in part derived from former Rule F6 e and in part new.
Section (h) is derived from former Rule F6 g.
Section (i) is in part derived from former Rule F6 h and in part new.
Section (j) is derived from former Rule F6 j.
Section (k) is derived from former Rule F6 i.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-647 by adding by adding a reference to new Rule 2-640, by adding a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 2-647. ENFORCEMENT OF JUDGMENT AWARDING POSSESSION

Upon the written request of the holder of a judgment awarding possession of property and subject to Rule 2-640, the clerk shall issue a writ directing the sheriff to place that party in possession of the property. The request shall include or be accompanied by (a) a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* and (b) instructions to the sheriff specifying ~~(a)~~(1) the judgment, ~~(b)~~(2) the property and its location, and ~~(c)~~(3) the party to whom the judgment awards possession. The clerk shall transmit the writ and the instructions to the sheriff. When a judgment awards possession of property or the payment of its value, in the alternative, the instructions shall also specify the value of the property, and the writ shall direct the sheriff to levy upon real or personal property of the judgment debtor to satisfy the judgment if the specified property cannot be found. When the judgment awards possession of real property located partly in

the county where the judgment is entered and partly in an adjoining county,

the sheriff may execute the writ as to all of the property.

Cross reference: See Code, Real Property Article, § 7-113(c)(1) for an alternate method to take possession of residential real property when the person claiming a right to possession of the property by the terms of a foreclosure sale or court order does not have a court-ordered writ of possession executed by a sheriff or constable. For authority of a sheriff's department to set conditions for removal of personalty or eviction in inclement weather, see *Thornton Mellon, LLC v. Frederick County Sheriff*, 479 Md. 474 (2022).

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-510 by adding a reference to new Rule 3-510.2 to section (b), as follows:

Rule 3-510. SUBPOENAS

(a) Required, Permissive, and Non Permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents or other tangible things at a court proceeding, including proceedings before an examiner; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection and copying of designated documents or other tangible things at a deposition taken pursuant to Rule 3-401 or 3-431.

(2) A subpoena may be used to compel a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection and copying of designated documents or other tangible things at a deposition taken pursuant to Rule 3-401 or 3-431.

(3) A subpoena may not be used for any other purpose. If the court, on motion of a party or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a

subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance.

~~A~~ Subject to the requirements of Rule 3-510.2, a subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

(1) On the request of any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed by the clerk, which the attorney shall fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for

the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3) of this Rule.

(c) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents or other tangible things to be produced, (6) the date of issuance, and (7) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60 days after the date of issuance provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 3-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age.

Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, § 6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health--General Article, §§ 4-302 and 4-306 (b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health--General Article, § 4-307 regarding mental health records; and Code, Financial Institutions Article, § 1-304.

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before an examiner) or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents or other tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents or other tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents or other tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

(g) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201(a) and 1-341.

(h) Records Produced by Custodians

(1) Generally

A custodian of records served with a subpoena to produce records at trial may comply by delivering the records to the clerk of the court that issued the subpoena at or before the time specified for production. The custodian may produce exact copies of the records designated unless the subpoena specifies that the original records be produced. The records shall be delivered in a sealed envelope labeled with the caption of the action, the date specified for production, and the name and address of the person at whose request the subpoena was issued. The records shall be accompanied by a certificate of the custodian that they are the complete records requested for the period designated in the subpoena and that the records are maintained in the regular course of business. The certification shall be prima facie evidence of the authenticity of the records.

Cross reference: Code, Health-General Article, § 4-306(b)(6); Code, Financial Institutions Article, § 1-304.

(2) During Trial

Unless the court has ordered that the records may be inspected and copied prior to trial, upon commencement of the trial, the clerk shall release the records only to the courtroom clerk assigned to the trial. The courtroom clerk shall return the records to the clerk promptly upon completion of trial or at an earlier time if there is no longer a need for them. Upon final disposition of the action, the clerk shall return the original records to the custodian but need not return copies.

(3) Presence of Custodian

When the actual presence of the custodian of records is required, the subpoena shall state with specificity the reason for the presence of the custodian.

Cross reference: Code, Courts Article, § 10-104 includes an alternative method of authenticating medical records in certain cases.

(i) Attachment

A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

Source: This Rule is derived as follows:
Section (a) is new but the second sentence is derived in part from former Rule 407 a.
Section (b) is new.
Section (c) is derived from former M.D.R. 114 a and b and 115 a.
Section (d) is derived from former M.D.R. 104 a and b and 116 b.
Section (e) is derived from former M.D.R. 115 b.
Section (f) is derived from the 1980 version of Fed. R. Civ. P. 45(d)(1).
Section (g) is derived from the 1991 version of Fed. R. Civ. P. 45(c)(1).
Section (h) is new.
Section (i) is derived from former M.D.R. 114 d and 742 e.

REPORTER'S NOTE

The proposed amendment to Rule 3-510 adds to section (b) a condition that issuance of a subpoena is subject to Rule 3-510.2. That proposed new Rule adds additional requirements for a subpoena to a financial institution compelling production of financial information or information derived from financial records pursuant to Code, Financial Institutions Article, § 1-304. See the Reporter's note to Rule 3-510.2.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

ADD NEW Rule 3-510.2, as follows:

Rule 3-510.2. SUBPOENAS – FINANCIAL INFORMATION

(a) Applicability

This Rule applies to a subpoena compelling production of financial information or information derived from financial records as authorized by Code, Financial Institutions Article, § 1-304.

Committee note: Code, Financial Institutions Article, § 1-304, permits a financial institution to disclose or produce financial records or information derived from financial records in compliance with a subpoena only if the subpoena contains a certification either that a copy has been served on the person whose records are sought or that service is waived by the court for good cause.

(b) Military Service Affidavit

(1) Requirement

A person entitled to issuance of a subpoena shall complete a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* as to the individual whose information or records is sought by the subpoena.

(2) If Individual is Not in Military Service

If the individual whose information or records is sought is not in military service, the person entitled to issuance of a subpoena shall:

(A) file the completed military service affidavit in the action; and

(B) request issuance of the subpoena pursuant to Rule 3-510.

(2) If Individual is or May be in Military Service

(A) Request; Referral to Judge

If the individual whose information or records is sought is in military service or the requester cannot determine whether the defendant is in military service, the person entitled to issuance of a subpoena shall file a request for issuance of a subpoena accompanied by the completed military service affidavit. The request shall be referred to a judge.

(B) Action by Court

If the court determines that the individual whose information or records is sought is in the military service, the court shall appoint an attorney for the individual and proceed under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*. If the court is unable to determine whether the individual is in military service, the court may enter an order pursuant to 50 U.S.C. § 3931 (b)(3).

(C) Issuance of Subpoena

After referral of the request to a judge, the clerk may issue the requested subpoena upon order of court.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 3-510.2 governs subpoenas to financial institutions, which are authorized by Code, Financial Institutions Article, § 1-304. See the Reporter's note to Rule 2-510.2.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-633 by adding a reference to new Rule 3-640 to subsection (b)(1), by adding to subsection (b)(1) a requirement that a request for examination be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 3-633. DISCOVERY IN AID OF ENFORCEMENT

(a) Methods

Unless a money judgment arises out of a small claim action against an individual and except as otherwise provided in Rule 3-634, a judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of interrogatories pursuant to Rule 3-421, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rule 3-421(b) apply separately to each. Thus, leave of court is not required under Rule 3-421 to serve one set of not more than 15 interrogatories on a judgment debtor solely because interrogatories were served upon that party before the entry of judgment.

Cross reference: See Code, Courts Article, § 11-704, prohibiting the District Court from ordering an individual to (1) appear for examination or (2) answer interrogatories in aid of execution of a money judgment arising out of a small claim action.

(b) Examination before a ~~judge~~ Judge or an ~~examiner~~ Examiner

(1) Generally

Subject to section (c) of this Rule and Rule 3-640, on request of a judgment creditor filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded shall issue an order requiring the appearance for examination under oath before a judge or person authorized by the Chief Judge of the Court to serve as an examiner of (A) the judgment debtor, or (B) any other person who may have property of the judgment debtor, be indebted for a sum certain to the judgment debtor, or have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor. The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

(2) Order

(A) The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in (i) the issuance of a body attachment directing a law enforcement officer to take the person served into custody and bring that person before the court and (ii) the person served being held in contempt of court.

Cross reference: See Rule 1-361.

(B) The order shall be served upon the judgment debtor or other person in the manner provided by Rule 3-121, but no body attachment shall issue in the event of a non-appearance absent a determination by the court that (i) the

person to whom the order was directed was personally served with the order in the manner described in Rule 3-121 (a)(1) or (3), or (ii) that person has been evading service willfully, as shown by a particularized affidavit based on personal knowledge of a person with firsthand knowledge.

(3) Sequestration

The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross reference: Code, Courts Article, §§ 6-411 and 9-119.

(c) Subsequent Examinations

After an examination of a person has been held pursuant to section (b) of this Rule, a judgment creditor may obtain additional examinations of the person in accordance with this section. On request of the judgment creditor, if more than one year has elapsed since the most recent examination of the person, the court shall order a subsequent appearance for examination of the person. If less than one year has elapsed since the most recent examination of the person, the court may require a showing of good cause.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 627.
Section (b) is in part new and in part derived from former M.D.R. 628 b.
Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-633.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

ADD NEW Rule 3-640, as follows:

Rule 3-640. ENFORCEMENT PROCEDURES – JUDGMENT DEBTOR IN MILITARY SERVICE

(a) Applicability

This Rule applies to a request for issuance of:

(1) a writ of execution pursuant to Rule 3-641;

(2) a writ of garnishment pursuant to Rule 3-645, Rule 3-645.1, or 3-646;

(3) a writ enforcing a judgment awarding possession pursuant to Rule 3-647; and,

(4) an order directing a judgment debtor to appear for an examination pursuant to Rule 3-633 (b).

(b) If Judgment Debtor is Not in Military Service

If a military service affidavit required to be submitted with a request described by section (a) of this Rule indicates that the judgment debtor is not in military service, the writ or order shall be issued as of course.

(c) If Judgment Debtor is or May be in Military Service

(1) Referral to Judge

If a military service affidavit required to be submitted with a request described by section (a) of this Rule indicates that the judgment debtor is in military service or that the creditor is unable to determine whether the debtor is in military service, the clerk shall refer the request to a judge.

(2) Action by Court

If the court determines that the judgment debtor is in the military service, the court shall appoint an attorney for the debtor and proceed under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* If the court is unable to determine whether the judgment debtor is in military service, the court may enter an order pursuant to 50 U.S.C. § 3931 (b)(3).

(3) Issuance of Writ

For a request for issuance of a writ, after referral of the request to a judge, the clerk may issue the requested writ upon order of court.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-641 by adding by adding a reference to new Rule 3-640 to section (a), by adding to section (a) a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 3-641. WRIT OF EXECUTION – ISSUANCE AND CONTENT

(a) Generally

A writ of execution directing the sheriff to levy upon property of the judgment debtor to satisfy a money judgment may be issued by the clerk of a court where the judgment was entered or is recorded and, subject to Rule 3-640, shall be issued only upon written request of the judgment creditor. If the levy is to be made upon real property located in a county other than Baltimore City, the clerk shall not issue the writ of execution unless it shall appear from that clerk's records or from a certification filed by the judgment creditor that a Notice of Lien has been recorded pursuant to Rule 3-621 in the circuit court for the county where the levy is to be made. The writ shall contain a notice advising the debtor that federal and state exemptions may be available and that there is a right to move for release of the property from the levy. The request shall include or be accompanied by (1) a military service affidavit in

compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* and (2) instructions to the sheriff that shall specify ~~(1)~~(A) the judgment debtor's last known address, ~~(2)~~(B) the judgment and the amount owed under the judgment, ~~(3)~~(C) the property to be levied upon and its location, and ~~(4)~~(D) whether the sheriff is to leave the levied property where found, or to exclude others from access to it or use of it, or to remove it from the premises. The judgment creditor may file additional instructions as necessary and appropriate and deliver a copy to the sheriff. More than one writ may be issued on a judgment, but only one satisfaction of a judgment may be had.

(b) Issuance to Another County

If a judgment creditor requests the clerk of the court where the judgment was entered to issue a writ of execution directed to the sheriff of another county, the clerk shall send to the clerk of the other county the writ, the instructions to the sheriff, and, if not already recorded there, a certified copy of the judgment for recording.

(c) Transmittal to Sheriff; Bond

Upon issuing a writ of execution or receiving one from the clerk of another county, the clerk shall deliver the writ and instructions to the sheriff. The sheriff shall endorse on the writ the exact hour and date of its receipt and shall maintain a record of actions taken pursuant to it. If the instructions direct the sheriff to remove the property from the premises where found or to exclude others from access to or use of the property, the sheriff may require the

judgment creditor to file with the sheriff a bond with security approved by the sheriff for the payment of any expenses that may be incurred by the sheriff in complying with the writ.

Cross reference: For execution of a judgment against the property of a corporation, joint stock company, association, limited liability company, limited liability partnership, or limited liability limited partnership for the amount of fines or costs awarded against it in a criminal proceeding, see Code, Criminal Procedure Article, § 4-203.

Source: This Rule is derived as follows:
Section (a) is in part new and in part derived from former M.D.R. G40 b 4, the last sentence of G49 a, and 622 e and i.
Section (b) is in part new and in part derived from former M.D.R. 622 h 1 and 3.
Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-641.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-645 by adding by adding a reference to new Rule 3-640 to section (b), by adding to section (b) a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 3-645. GARNISHMENT OF PROPERTY – GENERALLY

(a) Availability

Subject to the provisions of Rule 3-645.1, this Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 3-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property includes any debt owed to the judgment debtor, whether immediately payable or unmatured.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was entered a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of each judgment debtor with respect to whom a writ is requested, and (4) the name and address of the garnishee. <u>The request shall include or be accompanied by a military service affidavit in</u>

compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* Upon the filing of the request and subject to Rule 3-640, the clerk shall issue a writ of garnishment directed to the garnishee.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) direct the garnishee to hold, subject to further proceedings or to termination of the writ, the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ,

(3) notify the garnishee of the time within which the answer must be filed and that failure to do so may result in judgment by default against the garnishee,

(4) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(5) notify the judgment debtor of the right to contest the garnishment by filing a motion asserting a defense or objection, and

(6) notify the judgment debtor that, if the garnishee files an answer pursuant to section (e) of this Rule and no further filings concerning the writ of garnishment are made with the court within 120 days following the filing of the

answer, the garnishee may file a notice of intent to terminate the writ of garnishment pursuant to subsection (k)(2) of this Rule.

Committee note: A writ of garnishment may direct a garnishee to hold the property of more than one judgment debtor if the name and address of each judgment debtor whose property is sought to be attached is stated in the writ.

(d) Service

The writ shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Promptly after service upon the garnishee, the person making service shall mail a copy of the writ to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 3-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Answer of Garnishee

The garnishee shall file an answer within 30 days after service of the writ. The answer shall admit or deny that the garnishee is indebted to the judgment debtor or has possession of property of the judgment debtor and shall specify the amount and nature of any debt and describe any property. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the judgment debtor could assert. After answering, the garnishee may pay any garnished indebtedness into court and may deliver to the sheriff any garnished property, which shall then be treated as if levied

upon by the sheriff. A garnishee who has filed an answer admitting indebtedness to the judgment debtor or possession of property of the judgment debtor is not required to file an amended answer solely because of an increase in the garnishee's indebtedness to the judgment debtor or the garnishee's receipt of additional property of the debtor.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the judgment creditor may proceed pursuant to Rule 3-509 for a judgment by default against the garnishee.

(g) When Answer Filed

If the garnishee files a timely answer, the matters set forth in the answer shall be treated as established for the purpose of the garnishment proceeding unless the judgment creditor files a reply contesting the answer within 30 days after its service. If a timely reply is not filed, the court may enter judgment upon request of the judgment creditor, the judgment debtor, or the garnishee. If a timely reply is filed to the answer of the garnishee, the matter shall proceed as if it were an original action between the judgment creditor as plaintiff and the garnishee as defendant and shall be governed by the rules applicable to civil actions.

(h) Interrogatories to Garnishee

The judgment creditor may serve interrogatories directed to the garnishee pursuant to Rule 3-421. The interrogatories shall contain a notice to the

garnishee that, unless answers are served within 30 days after service of the interrogatories or within the time for filing an answer to the writ, whichever is later, the garnishee may be held in contempt of court. The interrogatories shall also inform the garnishee that the garnishee must file a notice with the court pursuant to Rule 3-401 (b). If the garnishee fails to serve timely answers to interrogatories, the court, upon petition of the judgment creditor and proof of service of the interrogatories, may enter an order in compliance with Rule 15-206 treating the failure to answer as a contempt and may require the garnishee to pay reasonable attorney's fees and costs.

(i) Release of Property; Claim by Third Person

Before entry of judgment, the judgment debtor may seek release of the garnished property in accordance with Rule 3-643, except that a motion under Rule 3-643 (d) shall be filed within 30 days after service of the writ of garnishment on the garnishee. Before entry of judgment, a third person claimant of the garnished property may proceed in accordance with Rule 3-643 (e).

(j) Judgment

The judgment against the garnishee shall be for the amount admitted plus any amount that has come into the hands of the garnishee after service of the writ and before the judgment is entered, but not to exceed the amount owed under the creditor's judgment against the debtor and enforcement costs.

(k) Termination of Writ

(1) Upon Entry of Judgment

Upon entry of a judgment against the garnishee pursuant to section (j) of this Rule, the writ of garnishment and the lien created by the writ shall terminate and the garnishee shall be under no obligation to hold any additional property of the debtor that may come into its possession after the judgment was entered.

(2) By the Garnishee

If the garnishee has filed an answer and no further filing concerning the writ of garnishment is made within 120 days after the filing of the answer, the garnishee may file, at any time more than 120 days after the filing of the answer, a notice of intent to terminate the writ of garnishment. The notice shall (A) contain a statement that a party may object to termination of the writ by filing a response within 30 days after service of the notice and (B) be served on the judgment debtor and the judgment creditor. If no response is filed within 30 days after service of the notice, the garnishee may file a termination of the garnishment, which shall release the garnishee from any further obligation to hold any property of the debtor.

Committee note: The methods of termination of a writ of garnishment provided in section (k) of this Rule are not exclusive. Section (k) does not preclude a garnishee or other party from filing a motion for a court order terminating a writ of garnishment on any other appropriate basis.

(l) Statement of Satisfaction

Upon satisfaction by the garnishee of a judgment entered against it pursuant to section (j) of this Rule, the judgment creditor shall file a statement

of satisfaction setting forth the amount paid. If the judgment creditor fails to file the statement of satisfaction, the garnishee may proceed under Rule 3-626.

Source: This Rule is derived as follows:
Section (a) is new but is consistent with former M.D.R. G47 a and G50 a.
Section (b) is new.
Section (c) is new.
Section (d) is in part derived from former M.D.R. F6 c and 104 a (iii) and is in part new.
Section (e) is in part new and in part derived from former M.D.R. G52 a and b.
Section (f) is new.
Section (g) is new.
Section (h) is derived from former M.D.R. G56.
Section (i) is new.
Section (j) is new.
Section (k) is new.
Section (l) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-646 by adding by adding a reference to new Rule 3-640 to section (b), by adding to section (b) a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 3-646. GARNISHMENT OF WAGES

(a) Applicability

This Rule governs garnishment of wages under Code, Commercial Law Article, §§ 15-601 through 15-606.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was obtained a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of the judgment debtor, and (4) the name and address of the garnishee. The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* Upon the filing of the request and subject to Rule 3-640, the clerk shall issue a writ of garnishment directed to the garnishee together with a blank answer form provided by the clerk.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) notify the garnishee of the time within which the answer must be filed and that failure to do so may result in the garnishee being held in contempt,

(3) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(4) notify the judgment debtor of the right to contest the garnishment of wages by filing a motion asserting a defense or objection.

(d) Service

The writ and answer form shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Upon issuance of the writ, a copy of the writ shall be mailed to the debtor's last known address. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Response of Garnishee and Debtor

The garnishee shall file an answer within 30 days after service of the writ. The answer shall state whether the debtor is an employee of the garnishee and, if so, the rate of pay and the existence of prior liens. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any

defense that the debtor could assert. The debtor may file a motion at any time asserting a defense or objection.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the court on motion of the creditor may order the garnishee to show cause why the garnishee should not be held in contempt and required to pay reasonable attorney's fees and costs.

(g) When Answer Filed

If the answer denies employment, the clerk shall dismiss the proceeding against the garnishee unless the creditor files a request for hearing within 15 days after service of the answer. If the answer asserts any other defense or if the debtor files a motion asserting a defense or objection, a hearing on the matter shall be scheduled promptly.

(h) Interrogatories to Garnishee

Interrogatories may be served on the garnishee by the creditor in accordance with Rule 3-645(h).

(i) Withholding and Remitting of Wages

While the garnishment is in effect, the garnishee shall withhold all garnishable wages payable to the debtor. If the garnishee has asserted a defense or is notified that the debtor has done so, the garnishee shall remit the withheld wages to the court. Otherwise, the garnishee shall remit them to the creditor or the creditor's attorney within 15 days after the close of the debtor's last pay period in each month. The garnishee shall notify the debtor of the

amount withheld each pay period and the method used to determine the amount. If the garnishee is served with more than one writ for the same debtor, the writs shall be satisfied in the order in which served.

(j) Duties of the Creditor

(1) Payments received by the creditor shall be credited first against accrued interest on the unpaid balance of the judgment, then against the principal amount of the judgment, and finally against attorney's fees and costs assessed against the debtor.

(2) Within 15 days after the end of each month in which one or more payments are received from any source by the creditor for the account of the debtor, the creditor shall mail to the garnishee and to the debtor a statement disclosing the payments and the manner in which they were credited. The statement shall not be filed in court, but the creditor shall retain a copy of each statement until 90 days after the termination of the garnishment proceeding and make it available for inspection upon request by any party or by the court.

(3) If the creditor fails to comply with the provisions of this section, the court upon motion may dismiss the garnishment proceeding and order the creditor to pay reasonable attorney's fees and costs to the party filing the motion.

(k) Termination of Garnishment

A garnishment of wages terminates 90 days after cessation of employment unless the debtor is reemployed by the garnishee during that period.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. F6 a.

Section (b) is new.
Section (c) is in part derived from former M.D.R. F6 b and in part new.
Section (d) is in part derived from former M.D.R. F6 c and in part new.
Section (e) is derived from former M.D.R. F6 d and k.
Section (f) is derived from former M.D.R. F6 f.
Section (g) is in part derived from former M.D.R. F6 e and in part new.
Section (h) is derived from former M.D.R. F6 g.
Section (i) is in part derived from former M.D.R. F6 h and in part new.
Section (j) is derived from former M.D.R. F6 j.
Section (k) is derived from former M.D.R. F6 i.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-647 by adding by adding a reference to new Rule 3-640, by adding a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 3-647. ENFORCEMENT OF JUDGMENT AWARDING POSSESSION

Upon the written request of the holder of a judgment awarding possession of property and subject to Rule 3-640, the clerk shall issue a writ directing the sheriff to place that party in possession of the property The request shall include or be accompanied by (a) a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* and (b) instructions to the sheriff specifying ~~(a)~~(1) the judgment, ~~(b)~~(2) the property and its location, and ~~(c)~~(3) the party to whom the judgment awards possession. The clerk shall transmit the writ and the instructions to the sheriff. When a judgment awards possession of property or the payment of its value, in the alternative, the instructions shall also specify the value of the property, and the writ shall direct the sheriff to levy upon real or personal property of the judgment debtor to satisfy the judgment if the specified property cannot be found. When the judgment awards possession of real property located partly in

the county where the judgment is entered and partly in an adjoining county,

the sheriff may execute the writ as to all of the property.

Cross reference: See Code, Real Property Article, § 7-113 (c)(1) for an alternate method to take possession of residential real property when the person claiming a right to possession of the property by the terms of a foreclosure sale or court order does not have a court-ordered writ of possession executed by a sheriff or constable.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

AGENDA ITEM 3

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 by deleting the provision from section (t) that differentiates between MDEC and non-MDEC counties, as follows:

Rule 1-101. APPLICABILITY

. . .

(t) Title 20

Title 20 applies to electronic filing and case management in the trial and appellate courts of this State as specified in Rule 20-102. ~~Where practicable, Rules 20-101 (e), 20-101 (g), 20-101 (u), and 20-107 may be applied to the signature of a justice, judge, judicial officer, judicial appointee, or court clerk in proceedings in a county that is not an MDEC County to the same extent they apply in an MDEC County, and Rules 20-403 through 20-406 may be applied in appeals and other proceedings in the Supreme Court and Appellate Court arising out of a court that is a non-MDEC court to the same extent they apply in matters arising out of a court in an MDEC County~~.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC

and non-MDEC Counties. As a result, it is proposed that the second sentence of section (t) be deleted as obsolete.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-105 by changing the term of art "MDEC action" to "action" throughout this Rule, by deleting, as obsolete, subsection (a)(2), by deleting, as obsolete, subsection (c)(1) pertaining to non-MDEC actions, by making stylistic changes, and by deleting the cross reference following section (c), as follows:

Rule 1-105. OFFICIAL RECORD OF MARYLAND RULES AND APPELLATE DECISIONS

(a) Applicability; Definitions

This Rule applies to decisions of the Supreme Court, the Appellate Court, or either of those Courts under their former names and to the Maryland Rules of Procedure. In this Rule, (1) "decision" means an opinion or order of the Supreme Court, the Appellate Court, or either of those Courts under their former names, ~~(2) "MDEC action" has the meaning stated in Rule 20-101,~~ and ~~(3)~~(2) the definitions in Code, State Government Article, § 10-1601 shall apply.

. . .

(c) Decisions

~~(1) In a Non MDEC Action~~

~~The official record of a decision of the Supreme Court or the Appellate Court in a non MDEC action is the paper slip opinion or order filed with the Clerk of that Court. The decision may be cited as provided in subsection (c)(3) of this Rule.~~

~~(2) In an MDEC Action~~

(1)~~(A)~~ In MDEC

The official record of a decision of the Supreme Court or the Appellate Court in an ~~MDEC~~ action shall be the electronic record of the decision filed in the MDEC system.

(2)~~(B)~~ Prior to MDEC

Notwithstanding the provisions of Rule 20-301, prior to July 1, 2018, the official record of a decision of the Supreme Court or the Appellate Court shall be the paper slip opinion or order filed with the Clerk of that Court. Regardless of whether the official record of a decision in an ~~MDEC~~ action is in electronic or paper form, the decision may be cited as provided in subsection (c)(3) of this Rule.

~~Cross reference: For the definition of "MDEC action," see Rule 20-101.~~

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC actions. As a result, it is proposed to revise this Rule to

conform to the changes also proposed in Rule 20-102 (where the term “MDEC action” is deleted).

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-324 by deleting, as obsolete, section (b) of this Rule, and by making stylistic changes, as follows:

Rule 1-324. NOTIFICATION OF ORDERS, RULINGS, AND COURT PROCEEDINGS

. . .

~~(b) Notification When Attorney Has Entered Limited Appearance~~

~~If, in an action that is not an MDEC action as defined in Rule 20-101 (m), an attorney has entered a limited appearance for a party pursuant to Rule 2-131 or Rule 3-131 and the automated operating system of the clerk's office does not permit the sending of notifications to both the party and the attorney, the clerk shall send all notifications required by section (a) of this Rule to the attorney as if the attorney had entered a general appearance. The clerk shall inform the attorney that, until the limited appearance is terminated, all notifications in the action will be sent to the attorney and that it is the attorney's responsibility to forward to the client notifications pertaining to matters not within the scope of the limited appearance. The attorney promptly shall forward to the client all such notifications, including any received after termination of the limited appearance.~~

~~Committee note: If an attorney has entered a limited appearance in an affected action, section (a) of this Rule requires the MDEC system or the clerk to send all court notifications to both the party and the party's limited representation attorney prior to termination of the limited appearance.~~

~~(c)~~(b) Inapplicability of Rule

This Rule does not apply to show cause orders and does not abrogate the requirement for notice of a summary judgment set forth in Rule 2-501(f).

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC actions. As a result, it is proposed to delete the section (b) of this Rule and re-letter the remaining section.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-510 by adding a provision to subsection (b)(3) concerning the use of subpoenas obtained through the AIS portal, as follows:

Rule 2-510. SUBPOENAS--COURT PROCEEDINGS AND DEPOSITIONS

. . .

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

. . .

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC or through the AIS portal, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

. . .

REPORTER'S NOTE

A revision is proposed to subsection (b)(3) to clarify that an attorney of record may use the subpoena tool contained in the AIS portal in the same manner as a subpoena obtained from a clerk through MDEC without violating

the provisions of subsection (b)(4) of this Rule. This revision is intended to conform the Rule to the current practice whereby many attorneys make use of the subpoena tool contained in the AIS portal to obtain blank subpoenas which are then filled out by the attorney and served on the appropriate party as contemplated in the current form of subsection (b)(3) with blank subpoenas obtained from a clerk through MDEC.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-541 by deleting the provisions in subsection (e)(1), in the Committee note following subsection (e)(1), in subsection (e)(5), and in the Committee note following subsection (e)(5) distinguishing between MDEC counties and non-MDEC counties, as follows:

Rule 2-541. MAGISTRATES

. . .

(e) Recommendations and Report

(1) Notification of Recommendations

The magistrate shall notify each party of the recommendations and contents of the proposed order, either (A) on the record at the conclusion of the hearing or (B) thereafter in writing filed with the clerk, who shall serve the recommendations and proposed order on each party as provided by Rule 20-205 ~~in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county~~. The clerk shall make a docket entry notation of the date and method of the notification.

Committee note: Rule 20-205 (c) requires that the clerk ~~in a MDEC county~~ serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

(2) Notice of Intent to File Exceptions

Within five days from notice of the recommendations pursuant to subsection (e)(1) of this Rule, a party intending to file exceptions shall file a notice of intent to do so with the clerk. The clerk promptly shall notify the magistrate of the filing and make a docket entry of the date and method of the notification. The failure to file a timely notice of intent to file exceptions is a waiver of the right to file exceptions.

(3) Filing of Report

Only the recommendations in the form of a proposed order or judgment need be filed unless the court has directed the magistrate to file a report or if a notice of intent to file exceptions is filed. If the court directed that a report be filed, the magistrate shall file a written report with the recommendations. If a notice of intent to file exceptions is filed, the report shall be filed within 30 days after the notice of intent to file exceptions is filed or within such other time as the court directs.

(4) Contents of Report

Unless otherwise ordered, the report shall include findings of fact and conclusions of law and recommendations in the form of a proposed order or judgment, and shall be accompanied by the original exhibits. A transcript of the proceedings before the magistrate need not be prepared prior to the report unless the magistrate directs, but, if prepared, shall be filed with the report.

(5) Service of Report

Unless service has been made in open court pursuant to subsection (e)(1) of this Rule, the clerk shall serve a copy of any written report, together with the recommendations in the form of a proposed order or judgment, on each party as provided by Rule 20-205 ~~in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county~~.

Committee note: Rule 20-205 (c) requires that the clerk ~~in a MDEC county~~ serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete references to MDEC counties in subsections (e)(1) and (e)(5) and in the Committee notes following these two subsections of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-510 by adding a provision to subsection (b)(3) concerning the use of subpoenas obtained through the AIS portal, as follows:

Rule 3-510. SUBPOENAS

. . .

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

. . .

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC or through the AIS portal, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-265 by adding a provision to subsection (b)(4) concerning the use of subpoenas obtained through the AIS portal, as follows:

Rule 4-265. SUBPOENA FOR HEARING OR TRIAL

. . .

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

. . .

(4) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC or through the AIS portal, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

. . .

REPORTER'S NOTE

See Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-103 by deleting the provision of section (e) referring to non-MDEC counties, as follows:

Rule 7-103. METHOD OF SECURING APPELLATE REVIEW

. . .

(e) Transmittal of Record

After all required fees have been paid, the clerk shall transmit the record as provided in Rules 7-108 and 7-109. The clerk shall enter on the docket a statement of the fees paid~~, and, in a non MDEC county, forward the filing fee with the record to the clerk of the circuit court~~.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to MDEC counties in section (e) of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 200 – JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-206.1 by deleting the provision of section (d) referring to "MDEC county," as follows:

Rule 7-206.1. RECORD--JUDICIAL REVIEW OF DECISION OF THE WORKERS' COMPENSATION COMMISSION

. . .

(d) Electronic Transmission

If the Commission is required by section (b) of this Rule or by order of court to transmit all or part of the record to the court, the Commission may file electronically ~~if the court to which the record is transmitted is the circuit court for an "MDEC county" as defined in Rule 20-101(n)~~.

Cross reference: See Code, Labor and Employment Article, § 9-739.

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to MDEC counties in section (d) of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT AND APPELLATE COURT

CHAPTER 200 – OBTAINING REVIEW IN THE APPELLATE COURT

AMEND Rule 8-201 by deleting the provision of section (c) referring to circuit courts in non-MDEC counties, as follows:

Rule 8-201. METHOD OF SECURING REVIEW-- THE APPELLATE COURT

. . .

(c) Transmittal of Record

After all required fees have been deposited, the clerk shall transmit the record as provided in Rules 8-412 and 8-413. The clerk shall enter on the docket a statement of the fees paid, and, if the lower court is ~~a circuit court in a non-MDEC county or~~ an orphans' court, forward the filing fee with the record to the Clerk of the Appellate Court.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to circuit courts in non-MDEC counties in section (c) of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT AND APPELLATE COURT

CHAPTER 600 – DISPOSITION

AMEND Rule 8-606 by deleting the term "court" in subsection (d)(1) and adding a provision pertaining to orphan's courts, and by adding a Committee note following subsection (d)(1), as follows:

Rule 8-606. MANDATE

. . .

(d) Transmission--Mandate and Record

(1) Generally

Except as provided in subsection (d)(2) of this Rule, upon issuance of the mandate, the Clerk shall transmit it to the appropriate lower court. Unless the appellate court orders otherwise, the original papers comprising the record shall be transmitted with the mandate. If the proceeding emanated from ~~a non-MDEC court~~ an orphan's court, the mandate shall be transmitted to the lower court in paper form.

Committee note: In Harford County, Howard County, and Montgomery County, direct appeal to the Appellate Court is the only method of appellate review of a judgment of an Orphan's Court. See Code, Courts Article, § 12-502. In all other jurisdictions, the appellant has the option of a direct appeal to the Appellate Court or an appeal to the circuit court for the county.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC courts. As a result, it is proposed to delete the obsolete reference to non-MDEC courts in subsection (d)(1) of this Rule and replace it with a reference to orphan's court. Orphan's courts remain the last potential source for appellate matters in the State that do not originate in MDEC. A Committee note is proposed following subsection (d)(1) to clarify the sources of appeals available to orphan's courts.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-205.3 by deleting the provision in the Committee note following subsection (i)(4) pertaining to non-MDEC circuit courts, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

. . .

(i) Report of Assessor

. . .

(4) Report of Mental Health Evaluation

An assessor who performed a mental health evaluation shall prepare a written report. The report shall be made available to the parties solely for use in the case and shall be furnished to the court under seal. The report shall be made available and furnished as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date.

Committee note: An assessor's written report submitted to the court in accordance with section (i) of this Rule shall be kept by the court under seal. The only access to these reports by a judge or magistrate shall be in accordance with subsections (k)(2) and (k)(3) of this Rule. Each circuit court, through MDEC ~~if available or otherwise~~, shall devise the means for keeping these reports under seal.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC courts. As a result, it is proposed to delete the obsolete reference to non-MDEC courts in the Committee note following subsection (i)(4) of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-208 by deleting the provision in subsection (e)(1) and the Committee note following subsection (e)(1) pertaining to MDEC counties, as follows:

Rule 9-208. REFERRAL OF MATTERS TO STANDING MAGISTRATES

. . .

(e) Findings and Recommendations

(1) Generally

Except as otherwise provided in section (d) of this Rule, the magistrate shall prepare written recommendations, which shall include a brief statement of the magistrate's findings and shall be accompanied by a proposed order. The magistrate shall provide notice of the recommendations and contents of the proposed order to each party, either (A) on the record at the conclusion of the hearing or (B) within ten days after the conclusion of the hearing in a matter referred pursuant to subsection (a)(1) of this Rule or within 30 days after the conclusion of the hearing in a matter referred pursuant to subsection (a)(2) of this Rule, by filing the written recommendations and proposed order with the clerk, who promptly shall serve the recommendations and proposed

order on each party as provided by Rule 20-205 ~~in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county~~. If the parties were notified by the magistrate on the record, the magistrate shall file the written recommendations and proposed order with the clerk promptly after the hearing. The clerk shall make a docket entry notation of the date and method of notification.

Committee note: Rule 20-205 (c) requires that the clerk ~~in a MDEC county~~ serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to non-MDEC counties in subsection (e)(1) and in the Committee note following subsection (e)(1) of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-103 by deleting the provision in subsection (c)(3) pertaining to MDEC counties, as follows:

Rule 11-103. MAGISTRATES

. . .

(c) Report and Recommendations

(1) Contents of Reports

The magistrate's report shall be a written report that includes proposed findings of fact, conclusions of law, and recommendations, and be accompanied by a proposed order.

(2) When Filed

Within 10 days after completing a disposition hearing or a post-disposition proceeding that requires a court order, the magistrate shall transmit to a judge assigned to the court the entire file in the case, together with the magistrate's report.

(3) Service

A copy of the report and proposed order shall be served on each party as provided by Rule 20-205 ~~in MDEC counties or Rule 1-321 in non-MDEC counties~~.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to non-MDEC counties in subsection (c)(3) of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-107 by deleting the provision in section (b) pertaining to MDEC counties, as follows:

Rule 11-107. SERVICE OF PAPERS

. . .

(b) Other Papers

Except as otherwise provided by law, all other papers filed with the court, other than a petition or citation, shall be served in the manner provided by Rule 20-205 ~~in MDEC counties or Rule 1-321 in non-MDEC counties~~.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to non-MDEC counties in section (b) of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 400 – CIRCUIT COURTS – CLERKS' OFFICES

AMEND Rule 16-402 by deleting the provision in section (b) pertaining to pre-MDEC data processing systems in certain counties and by adding a provision to section (b) prohibiting the use of any other non-MDEC case management, as follows:

Rule 16-402. OPERATIONS

. . .

(b) General Operations

The State Court Administrator shall develop policies, procedures, and standards for all judicial and non-judicial operations of the clerks' offices, including case processing, records management, forms control, accounting, budgeting, inventory, and data processing. ~~The data processing systems in Baltimore City, Prince George's County, and Montgomery County in effect on July 1, 2016 shall not be replaced,~~ No case management system other than ~~by~~ MDEC~~,~~ may be used in the State except by order of the Chief Justice of the Supreme Court.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. Now that the only data processing system used statewide is MDEC, it is proposed to delete the obsolete reference to pre-MDEC data processing systems in Baltimore City, Prince George's County, and Montgomery County in section (b) of this Rule and to add a provision to clarify that no other case management system may be used without the approval of the Chief Justice of the Supreme Court

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 400 – CIRCUIT COURTS – CLERKS' OFFICES

AMEND Rule 16-406 by deleting obsolete provisions that pertain to sending emails from non-MDEC counties, as follows:

Rule 16-406. NOTICE TO THE APPELLATE COURT

Upon the filing of (1) a notice of appeal or application for leave to appeal to the Appellate Court, (2) a timely motion pursuant to Rule 2-532, 2-533, or 2-534 if filed after the filing of a notice of appeal, or (3) an order striking a notice of appeal pursuant to Rule 8-203, the clerk of the circuit court immediately shall send ~~via email, or~~ via the MDEC system ~~if from an MDEC County,~~ a copy of the paper filed to the Clerk of the Appellate Court. If a notice of appeal is accompanied by a Civil Appeal Information Report required by Rule 8-205, the Information Report shall be transmitted in the same manner as the notice of appeal.

Source: This Rule is derived from former Rule 16-309 (2016).

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to a clerk sending an email notice in non-MDEC counties in this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

AMEND Rule 16-901 by deleting the word "Actions" from the cross reference following section (b), as follows:

Rule 16-901. SCOPE OF CHAPTER

. . .

(b) Access by Judicial Employees, Parties, Attorneys of Record, and Certain Government Agencies

The Rules in this Chapter do not limit access to (1) judicial records by authorized judicial officials or employees in the performance of their official duties or to government agencies or officials to whom access is permitted by law, or (2) a case record by a party or attorney of record in the action.

Cross reference: For other Rules that affect access to judicial records, see Rule 16-502 (In District Court), Rule 16-504 (Electronic Recording of Circuit Court Proceedings), Rule 16-504.1 (Access to Electronic Recording of Circuit Court Proceedings), and Rule 20-109 (Access to Electronic Records in MDEC ~~Actions~~).

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC actions. A conforming amendment is proposed to delete the

obsolete reference to “MDEC Actions” from the cross reference following section (b) of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101 by deleting, as obsolete, sections (m) and (n), by deleting each reference to "MDEC County" in this Rule, by adding the word "implements" to proposed new section (m), and by making stylistic changes, as follows:

Rule 20-101. DEFINITIONS

In this Title the following definitions apply except as expressly otherwise provided or as necessary implication requires:

. . .

(l) MDEC or MDEC System

"MDEC" or "MDEC system" means the system of electronic filing and case management established by the Supreme Court.

Committee note: "MDEC" is an acronym for Maryland Electronic Courts. The MDEC system has two components. (1) The electronic filing system permits users to file submissions electronically through a primary electronic service provider (PESP) subject to clerk review under Rule 20-203. The PESP transmits registered users' submissions directly into the MDEC electronic filing system and collects, accounts for, and transmits any fees payable for the submission. The PESP also accepts submissions from approved secondary electronic service providers (SESP) that filers may use as an intermediary. (2) The second component--the electronic case management system--accepts submissions filed through the PESP, maintains the official electronic record ~~in an MDEC county~~, and performs other case management functions.

~~(m) MDEC Action~~

~~"MDEC action" means an action to which this Title is made applicable by Rule 20-102.~~

~~(n) MDEC County~~

~~"MDEC County" means a county in which, pursuant to an administrative order of the Chief Justice of the Supreme Court posted on the Judiciary website, MDEC has been implemented.~~

~~(o)~~(m) MDEC Start Date

"MDEC Start Date" means the date specified in an administrative order of the Chief Justice of the Supreme Court posted on the Judiciary website from and after which a county first ~~becomes an MDEC County~~ implements MDEC.

~~(p)~~(n) MDEC System Outage

(1) For registered users other than judges, judicial appointees, clerks, and judicial personnel, "MDEC system outage" means the inability of the primary electronic service provider (PESP) to receive submissions by means of the MDEC electronic filing system.

(2) For judges, judicial appointees, clerks, and judicial personnel, "MDEC system outage" means the inability of the MDEC electronic filing system or the MDEC electronic case management system to receive electronic submissions.

(q)(o) Redact

"Redact" means to exclude information from a document accessible to the public.

~~(r)~~(p) Registered User

"Registered user" means an individual authorized to use the MDEC system by the State Court Administrator pursuant to Rule 20-104.

~~(s)~~(q) Restricted Information

"Restricted information" means information that, by Rule or other law, is not subject to public inspection or is prohibited from being included in a court record absent a court order.

Committee note: There are several Rules and statutes that (1) make certain categories of records inaccessible to the public except by court order or (2) preclude certain information from being included in judicial records that otherwise are accessible to the public. See generally the Rules in Title 16, Chapter 900 and Rule 1-322.1. Filers of submissions under MDEC need to be aware of those provisions and alert the clerk to whether a document, or a part of a document, included in a submission is that kind of document or contains that kind of information. See Rules 20-201 (h), 20-201.1, and 20-203 (d), (e), and (f). Failure to comply with the requirements in those Rules may result in rejection or striking of the submission.

~~(t)~~(r) Scan

"Scan" means to convert printed text or images to an electronic format compatible with MDEC.

~~(u)~~(s) Signature

Unless otherwise specified, "signature" means the signer's typewritten name accompanied by a visual image of the signer's handwritten signature or by the symbol /s/.

Cross reference: Rule 20-107.

~~(v)~~(t) Submission

"Submission" means a pleading or other document filed in an action. "Submission" does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

~~(w)~~(u) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a submission; it may either accompany a submission or be offered in open court.

Cross reference: See Rule 20-106 (c)(2) for items not required to be filed electronically.

Committee note: Examples of tangible items include an item of physical evidence, an oversize document, and a document that cannot be legibly scanned or would otherwise be incomprehensible if converted to electronic form.

~~(x)~~(v) Trial Court

"Trial court" means the District Court of Maryland and a circuit court, even when the circuit court is acting in an appellate capacity.

Committee note: "Trial court" does not include an orphans' court, even when, as in Harford and Montgomery Counties, a judge of the circuit court is sitting as a judge of the orphans' court.

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties and actions.

In section (l), the phrase “in an MDEC County” is proposed to be deleted as obsolete and to conform to the proposed deletion of section (n).

Section (m), “MDEC Action,” is proposed to be deleted to conform to the proposed amendments to Rule 1-202. A provision is proposed to make the definition of “Action” in Rule 1-202 apply to the Rules in Title 20, rendering the definition contained in section (m) of this Rule superfluous.

Section (n), “MDEC County,” is proposed to be deleted as obsolete now that all counties state-wide are using MDEC.

The provision “becomes an MDEC County” is replaced with “implements MDEC” in new section (m) to conform to the proposed deletion of section (n).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-102 by deleting each reference to "MDEC County" in this Rule, by deleting "a" and "for an MDEC" from subsection (a)(1), by adding the words "the" and "that" to subsection (a)(1), and by deleting the Committee note following section (c), as follows:

Rule 20-102. APPLICATION OF TITLE

(a) Trial Courts

(1) New Actions and Submissions

On and after the MDEC start date in a county, this Title applies to (A) new actions filed in ~~a~~ the trial court ~~for an MDEC~~ that county, (B) new submissions in actions then pending in that court, (C) new submissions in actions in that court that were concluded as of the MDEC start date but were reopened on or after that date, (D) new submissions in actions remanded to that court by a higher court or the United States District Court, and (E) new submissions in actions transferred or removed to that court.

(2) Existing Documents; Pending and Reopened Cases

With the approval of the State Court Administrator, (A) the County Administrative Judge of ~~the~~ a circuit court ~~for an MDEC county~~, by order, may direct that all or some of the documents that were filed prior to the MDEC start

date in a pending or reopened action in that court be converted to electronic form by the clerk, and (B) the Chief Judge of the District Court, by order, may direct that all or some of the documents that were filed prior to the MDEC start date in a pending or reopened action in the District Court be converted to electronic form by the clerk. Any such order by the County Administrative Judge or the Chief Judge of the District Court shall include provisions to ensure that converted documents comply with the redaction provisions applicable to new submissions.

(b) Appellate Courts

(1) Appellate Proceedings

(A) Generally

Except as provided in subsection (b)(1)(B) of this Rule, this Title applies to all appellate proceedings in the Appellate Court and Supreme Court seeking the review of a judgment or order entered in any action.

(B) Exception

For appeals from an action to which section (a) of this Rule does not apply, the clerk of the lower court shall transmit the record in accordance with Rules 8-412 and 8-413, and, upon completion of the appellate proceeding, the clerk of the appellate court shall transmit the mandate and return the record to the lower court in accordance with Rule 8-606 (d)(1).

(2) Other Proceedings

This Title also applies to (A) a question certified to the Supreme Court pursuant to the Maryland Uniform Certification of Questions of Law Act, Code, Courts Article, §§ 12-601-12-613; and (B) an original action in the Supreme Court allowed by law.

Committee note: After the Supreme Court has received and docketed a certification order pursuant to Rule 8-304 or Rule 8-305, parties who are registered users must file any subsequent papers electronically.

(c) Applicability of Other Rules

Except to the extent of any inconsistency with the Rules in this Title, all of the other applicable Maryland Rules continue to apply. To the extent there is any inconsistency, the Rules in this Title prevail.

~~Committee note: The intent of the 2020 amendments to this Rule is to expand MDEC to appeals and certain other proceedings in the Appellate Court and Supreme Court that emanate from non-MDEC subdivisions. That requires certain clarifications. First, unless they are registered users under Rule 20-104, self represented litigants and other persons subject to Rule 20-106 (a)(4) may not file electronically. See Rule 20-106. They will continue to file their submissions to the appellate court in paper form, unless otherwise permitted by the Court. Second, unless otherwise permitted by the appellate court, trial courts in non MDEC subdivisions shall continue to transmit the record in accordance with Rules 8-412 and 8-413 and not Rule 20-402.~~

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. An amendment is proposed to delete each obsolete reference to "MDEC County" in this Rule.

Subsection (a)(1) is proposed to be amended to remove the reference to "MDEC county" and the word "a." The words "the" and "that" are proposed to

be added to this subsection. The effect of these revisions is to shift the focus of subsection (a)(1) from the concept of MDEC Counties to individual courts in counties after the MDEC start date.

The obsolete Committee note following section (c) is also proposed to be deleted.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-104 by changing the term of art "MDEC action" to "action" throughout this Rule, as follows:

Rule 20-104. USER REGISTRATION

(a) Eligibility and Necessity

(1) Any individual may apply to become a registered user in accordance with this Rule.

(2) Only a registered user may file submissions electronically in an ~~MDEC~~ action.

(b) On-line Application

(1) An individual seeking to become a registered user shall complete an on-line application in the form prescribed by the State Court Administrator.

(2) The form may require information the State Court Administrator finds necessary to identify the applicant with particularity and shall include (A) an agreement by the applicant to comply with MDEC policies and procedures and the Rules in this Title, (B) a statement as to whether the applicant is an attorney and, if so, is a member of the Maryland Bar in good standing, and (C) whether the applicant has ever previously registered and, if so, information

regarding that registration, including whether it remains in effect and why the applicant is seeking another registration.

Committee note: One of the purposes of registration is to help ensure that electronic submissions are not filed in ~~MDEC~~ actions by persons who are not authorized to file them. See Rule 20-201 (b). It is important for the MDEC system to know, to the extent possible, whether a person seeking to file a submission or to access, through MDEC, documents in an ~~MDEC~~ action, is who he or she purports to be.

This is particularly important with respect to attorneys, who have greater ability to file submissions and access case records than other members of the public. As part of the registration process, attorney-applicants are required to supply a unique attorney number so that MDEC will know they are attorneys. Other kinds of information may be necessary to identify non-attorneys. See section (e) of this Rule with respect to multiple registrations.

(c) Username and Password

Upon successful completion of the registration process in accordance with section (b) of this Rule and any verification that the State Court Administrator may require, the individual becomes a registered user. The State Court Administrator shall issue to the registered user a username and a password, which together shall enable the registered user to file submissions electronically in an ~~MDEC~~ action to which the registered user is a party or is otherwise entitled to file the submission and have the access provided by Rule 20-109. The registered user may change the assigned username and password in conformance with the policies and procedures published by the State Court Administrator.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete refences to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform this Rule to the amendments of Rule 20-101, it is proposed to delete each obsolete reference to "MDEC" from the term "MDEC action," and to replace the now obsolete reference concerning "MDEC counties" from the Committee note following subsection (l)(2) with new language clarifying that the delegation referred to in the note is in MDEC.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by changing the term of art "MDEC action" to "action" throughout this Rule, as follows:

Rule 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

(a) Filers—Generally

(1) Attorneys

Except as otherwise provided in section (b) of this Rule, an attorney who enters an appearance in an ~~MDEC~~ action shall file electronically the attorney's entry of appearance and all subsequent submissions in the action.

(2) Judges, Judicial Appointees, Clerks, and Judicial Personnel

Except as otherwise provided in section (b) of this Rule, judges, judicial appointees, clerks, and judicial personnel, shall file electronically all submissions in an ~~MDEC~~ action.

(3) Self-represented Litigants

(A) Except as otherwise provided in section (b) of this Rule, a self-represented litigant in an ~~MDEC~~ action who is a registered user shall file electronically all submissions in the ~~MDEC~~ action.

(B) A self-represented litigant in an ~~MDEC~~ action who is not a registered user may not file submissions electronically.

(4) Other Persons

Except as otherwise provided in the Rules in this Title, a registered user who is required or permitted to file a submission in an ~~MDEC~~ action shall file the submission electronically. A person who is not a registered user shall file a submission in paper form.

Committee note: Examples of persons included under subsection (a)(4) of this Rule are government agencies or other persons who are not parties to the ~~MDEC~~ action but are required or permitted by law or court order to file a record, report, or other submission with the court in the action and a person filing a motion to intervene in an ~~MDEC~~ action.

(b) Exceptions

(1) MDEC System Outage

Registered users, judges, judicial appointees, clerks, and judicial personnel are excused from the requirement of filing submissions electronically during an MDEC system outage in accordance with Rule 20-501.

(2) Other Unexpected Event

If an unexpected event other than an MDEC system outage prevents a registered user, judge, judicial appointee, clerk, or judicial personnel from filing submissions electronically, the registered user, judge, judicial appointee, clerk, or judicial personnel may file submissions in paper form until the ability to file electronically is restored. With each submission filed in paper form, a registered user shall submit to the clerk an affidavit describing the event that

prevents the registered user from filing the submission electronically and when, to the registered user's best knowledge, information, and belief, the ability to file electronically will be restored.

Committee note: This subsection is intended to apply to events such as an unexpected loss of power, a computer failure, or other unexpected event that prevents the filer from using the equipment necessary to effect an electronic filing.

(3) Other Good Cause

For other good cause shown, the administrative judge having direct administrative supervision over the court in which an ~~MDEC~~ action is pending may permit a registered user, on a temporary basis, to file submissions in paper form. Satisfactory proof that, due to circumstances beyond the registered user's control, the registered user is temporarily unable to file submissions electronically shall constitute good cause.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete refences to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform this Rule to the amendments of Rule 20-101, it is proposed to delete each obsolete reference to "MDEC" from the term "MDEC action."

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 by deleting the word "MDEC" from each instance of "MDEC Action" in sections (a), (b), subsection (f)(2), the Committee note following subsection (g)(2), and section (h) of this Rule, by moving the phrases "all case records in that action" and "to case records" in section (b), by adding the phrase "to electronic case records" in section (b), by deleting the provision concerning MDEC jurisdictions in subsection (j)(2), and by making stylistic changes, as follows:

Rule 20-109. ACCESS TO ELECTRONIC RECORDS IN ~~MDEC~~ ACTIONS

(a) Generally

Except as otherwise provided in this Rule, access to electronic judicial records in an ~~MDEC~~ action is governed by the Rules in Title 16, Chapter 900.

(b) Parties and Attorneys of Record

Subject to any protective order issued by the court or other law, parties to and attorneys of record for a party in an ~~MDEC~~ action shall have full access to all case records in that action, including remote access to electronic case records~~, to all case records in that action~~. An attorney for a victim or victim's representative shall have access to case records, including remote access to electronic case records, ~~to case records~~ as provided in Rule 1-326 (d).

(c) Judges and Judicial Appointees

Judges and judicial appointees shall have full access, including remote access, to judicial records to the extent that such access is necessary to the performance of their official duties. The Chief Justice of the Supreme Court, by Administrative Order, may further define the scope of remote access by judges and judicial appointees.

(d) Clerks and Judicial Personnel

Clerks and judicial personnel shall have full access from their respective work stations to judicial records to the extent such access is necessary to the performance of their official duties. The State Court Administrator, by written directive, may further define the scope of such access by clerks and judicial personnel.

(e) Judiciary Contractors

The State Court Administrator, by written directive, may allow appropriate access for Judiciary contractors from their respective work stations to judicial records to the extent that such access is necessary to the performance of their official duties. Before access under this section is granted to a contractor, the contractor shall sign a non-disclosure agreement on a form approved by the Chief Justice of the Supreme Court.

(f) Court-Designated ADR Practitioners

(1) Definition

In this section, "ADR practitioner" means an individual who conducts ADR under the Rules in Title 17, and includes a mediator designated pursuant to Rule 9-205.

(2) Access to Case Records

During the period of designation of a court-designated ADR practitioner in an ~~MDEC~~ action, and subject to any protective order issued by the court or other law, the ADR practitioner shall have full access, including remote access, to all case records in that action. In an action in the circuit court, the ADR practitioner shall file a notice of the designation with the clerk and, promptly upon completion of all services rendered pursuant to the designation, a notice that the designation is terminated. If not terminated earlier, the designation shall end when the case is closed.

Committee note: The special access provided by section (f) may be needed to assist the ADR practitioner in rendering the services anticipated by the designation but should end when no further services are anticipated.

(g) Public Access

(1) Access Through CaseSearch

Members of the public shall have free access to information posted on CaseSearch.

(2) Unshielded Documents

Subject to any protective order issued by the court, members of the public shall have free access to unshielded case records and unshielded parts of case records from computer terminals or kiosks that the courts make

available for that purpose. Each court shall provide a reasonable number of terminals or kiosks for use by the public. The terminals or kiosks shall not permit the user to download, alter, or forward the information, but the user is entitled to a copy of or printout of a case record in accordance with Rule 16-904(c).

Committee note: The intent of subsection (g)(2) of this Rule is that members of the public be able to access unshielded electronic case records in any ~~MDEC~~ action from a computer terminal or kiosk in any courthouse of the State, regardless of where the action was filed or is pending.

(h) Department of Juvenile Services

Subject to any protective order issued by the court, a registered user authorized by the Department of Juvenile Services to act on its behalf shall have full access, including remote access, to all case records in an ~~MDEC~~ action to the extent the access is (1) authorized by Code, Courts Article, § 3-8A-27 and (2) necessary to the performance of the individual's official duties on behalf of the Department.

(i) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case records to government agencies and officials (1) who are approved for such access by the Chief Justice of the Supreme Court, upon a recommendation by the State Court Administrator, and (2) when those agencies or officials seek such access solely in their official capacity, subject to such conditions regarding the dissemination of such information imposed by the Chief Justice.

(j) CASA Program

(1) Definition

In this section, "CASA program" means a Court-Appointed Special Advocate Program created pursuant to Code, Courts Article, § 3-830.

Committee note: CASA programs provide trained volunteers (1) to provide background information to the Juvenile Courts to aid them in making decisions in the child's best interest, and (2) to ensure that children who are the subject of proceedings within the jurisdiction of the court are provided appropriate case planning and services. See Code, Courts Article, §§ 3-830 and 3-8A-32. CASA programs are county-based. They are created in a county with the support of the Juvenile Court for that county. The overall CASA program is administered by the Administrative Office of the Courts, which may adopt rules governing the operation of the program, including supervision of the volunteers.

More than a dozen CASA programs have been created throughout the State, some of which serve the Juvenile Courts in more than one county. Upon an appointment to assist a child in a particular case, the director of the program assigns a volunteer attached to that program to provide that assistance. The confidentiality that applies to court records in juvenile cases does not prohibit review of a court record by a "Court-Appointed Special Advocate for the child" in a proceeding involving that child. See Code, Courts Article, §§ 3-827(a)(2) and 3-8A-27(b)(2). The purpose of this section is to clarify how that access and ability to file reports may be accomplished through MDEC.

(2) Registered Users; Reports

Each CASA program shall inform the clerk of the circuit court for each county within its authorized service area in writing of the name of and contact information for not more than two staff persons who are registered users authorized by the program to have remote access and to file reports through MDEC on behalf of the program. Except as otherwise ordered by the court, only those registered users may file reports and have remote access to court records on behalf of the program. CASA program registered users must file

reports through MDEC ~~if the program's service area is located in an MDEC jurisdiction~~.

(3) Limitations; Access

The ability to file reports and have remote access to court records shall be limited to cases in which the CASA program or a volunteer on behalf of the program has been appointed by the court to provide service and is allowed only for the period during which service is being provided in that case pursuant to the order of appointment. Unless otherwise ordered by the court, access shall include notices of hearings and all other records not under seal.

(4) Control of Records

The registered user with remote access (A) shall keep exclusive control over the records obtained and (B) may not permit such records to be shared with or copied for anyone other than (i) an authorized volunteer designated by the CASA program to provide service to the child pursuant to the order of appointment and (ii) CASA program staff authorized to supervise the volunteer. Any order expunging the court records in a case in which the CASA program participated shall include the expungement of records in that case obtained and maintained by the program.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete refences

to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform this Rule to the amendments of Rule 20-101, it is proposed to delete each obsolete reference to "MDEC" from the term "MDEC action," and to delete the now obsolete reference concerning "an MDEC jurisdiction" in section (j)(2).

Revisions are also proposed to section (b) to clarify that parties and attorneys of record are intended to have access to all case records in their action, to include remote access to electronic case records to the extent that they exist.

A stylistic change is also proposed to the title of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-201 by deleting the word "MDEC" from each instance of "MDEC Action" in sections (a) and (e) of this Rule, by deleting the provision concerning "MDEC counties" in the Committee note following subsection (l)(2), and by adding the word "MDEC" to the Committee note following subsection (l)(2), as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

(a) Scope

Subject to section (l) of this Rule, sections (b), (c), and (e) of this Rule apply to all filers. Sections (d), (f), (g), (h), (j), (k), and (l) of this Rule do not apply to judges, judicial appointees, clerks, and judicial personnel.

(b) Authorization to File

A person may not file a submission in an ~~MDEC~~ action unless authorized by law to do so.

(c) Policies of State Court Administrator

A filer shall comply with all published policies and procedures adopted by the State Court Administrator pursuant to Rule 20-103.

(d) Signature

If, under Rule 1-311, the signature of the filer is required, the submission shall be signed in accordance with Rule 20-107.

(e) Multiple Submissions Filed Together

All submissions related to a particular ~~MDEC~~ action that are filed together at one time shall be included in a single electronic folder, sometimes referred to as an envelope.

Committee note: As an example, an answer to a complaint, a counter-claim, a cross-claim, and a motion for summary judgment, all filed at the same time in the same action, must be filed as separate pleadings or papers but in a single electronic folder.

(f) Service Contact Information

A registered user who files a submission and who will be entitled to electronic service of subsequent submissions in the action shall include in the submission accurate information as to the e-mail address where such electronic service may be made upon the registered user. If the submission is the registered user's initial submission in an action, or if a change in the e-mail address is made, the filer also shall provide service contact information by using the "Actions" drop-down box that is part of the MDEC submission process.

Committee note: If the "Actions" drop-down box is not used to provide service contact information when an initial submission is filed in an action, the default e-mail address for subsequent notifications and service of other parties' submission in the action will be the e-mail address that the filer used when transmitting the initial submission in the action.

(g) Certificate of Service

(1) Generally

Other than an original pleading that is served by original process, each submission that is required to be served pursuant to Rule 20-205 (d) shall contain a certificate of service signed by the filer.

(2) Non-Electronic Service

If service is not to be made electronically on one or more persons entitled to service, service on such persons shall be made in accordance with the applicable procedures established by other Titles of the Maryland Rules, and the submission shall include a certificate of service that complies with Rule 1-323 as to those persons and states that all other persons, if any, entitled to service were served by the MDEC system.

(3) Electronic Service

If service is made electronically by the MDEC system on all persons entitled to service, the certificate shall so state.

(h) Restricted Information

Except as provided in Rule 20-201.1, a submission filed by a filer shall not contain any restricted information.

(i) Electronic File Names

The electronic file name for each submission shall relate to the title of the submission. If a submission relates to another submission, the file name and the title of the submission shall make reference to the submission to which it

relates. If all or part of a submission is to be sealed or shielded pursuant to Rule 20-201.1, the electronic file name shall so indicate.

(j) Proposed Orders

A proposed order to be signed by a judge or judicial appointee shall be (1) in an electronic text format specified by the State Court Administrator and (2) filed as a separate document identified as relating to the motion or other request for court action to which the order pertains. The file name of the proposed order shall indicate that it is a proposed order.

Committee note: As originally adopted, section (j) of this Rule required that a proposed order be submitted in "an editable text form." Because at the time of initial implementation, the MDEC system could only accept pdf documents, amendments to section (j) [formerly lettered (k)] were made in 2015 to give the State Court Administrator the flexibility to specify the electronic format of the proposed order. The filer should consult the MDEC policies and procedures posted on the Judiciary website for any changes to the required format.

(k) Fee

(1) Generally

A submission shall be accompanied, in a manner allowed by the published policies and procedures adopted by the State Court Administrator, by any fee required to be paid in connection with the filing.

(2) Waiver--Civil Action

(A) A filer in a civil action who (i) desires to file electronically a submission that requires a prepaid fee, (ii) has not previously obtained and had docketed a waiver of prepayment of the fee, and (iii) seeks a waiver of such prepayment,

shall file a request for a waiver pursuant to Rule 1-325 or Rule 1-325.1, as applicable.

(B) The request shall be accompanied by (i) the documents required by Rule 1-325 or Rule 1-325.1, as applicable, (ii) the submission for which a waiver of the prepaid fee is requested, and (iii) if applicable, a proposed order granting the request.

(C) No fee shall be charged for the filing of the waiver request.

(D) The clerk shall docket the request for waiver. If the clerk waives prepayment of the prepaid fee pursuant to Rule 1-325 (d) or the applicable provision of Rule 1-325.1, the clerk also shall docket the attached submission. If prepayment is not waived by the clerk, the clerk and the court shall proceed in accordance with Rule 1-325 (e) or Rule 1-325.1 (c), as applicable.

(3) Waiver--Criminal Action

A fee waiver in a criminal action is governed by Rule 7-103 (c)(2), 8-201 (b)(2), or 8-303 (a)(2), as applicable.

(l) Filings by Certain Judicial Officers and Employees

(1) District Court Commissioners

(A) Filings in District Court

In accordance with policies and procedures approved by the Chief Judge of the District Court and the State Court Administrator, District Court commissioners shall file electronically with the District Court reports of pretrial release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-

216, 4-216.1, 4-217, 4-267, or 4-347. Those filings shall be entered directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a District Court clerk.

Committee note: The intent of the last sentence of subsection (l)(1)(A), as well as subsections (l)(1)(B) and (l)(2), is to provide the same obligation to review and correct post-filing docket entries that the clerk has with respect to filings under Rule 20-203 (b) (1).

(B) Filings in Circuit Court

Subject to approval by the Chief Justice of the Supreme Court, the State Court Administrator may adopt policies and procedures permitting District Court Commissioners to file electronically with a circuit court reports of pretrial release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, 4-267, or 4-347. The policies and procedures shall permit District Court Commissioners to enter those filings directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a circuit court clerk.

(2) Circuit Court Employees

In addition to authorized employees of the clerk's office and with the approval of the county administrative judge, the clerk of a circuit court may authorize other employees of the circuit court to enter filings directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a circuit court clerk.

Committee note: In some counties, there are circuit court employees who are not employees in the clerk's office but who perform duties that, in other counties, are performed by employees in the clerk's office. Those employees are at-will employees who serve at the pleasure of the court or the county administrative judge. The intent of subsection (l)(2) is to permit the clerk, with the approval of the county administrative judge, to authorize those employees to enter filings directly into the MDEC system as part of the performance of their official duties, subject to post-filing review by the clerk. It is not the intent that this authority apply to judges' secretaries, law clerks, or administrative assistants. Rule 20-108 (b) authorizes judges and judicial appointees ~~in MDEC counties~~ to delegate to law clerks, secretaries, and administrative assistants authority to file submissions on behalf of the judge or judicial appointee in MDEC. That delegated authority is a ministerial one, to act on behalf of and for the convenience of the judge or judicial appointee and not an authority covered by subsection (l)(2).

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete refences to this concept in the Rules, proposed revisions to Rules 1-202 and 20-101 result in the definition of "MDEC Action" being deleted and the definition of "Action" being revised to cover all actions including actions filed in MDEC.

To conform this Rule to the amendments of Rule 1-202 and Rule 20-101, it is proposed to delete each obsolete reference to "MDEC" from the term "MDEC action," and to replace the now obsolete reference concerning "MDEC counties" from the Committee note following subsection (l)(2) with new language clarifying that the delegation referred to in the note is in MDEC.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-204 by changing the term of art "MDEC action" to "action," as follows:

Rule 20-204. NOTICE OF FILING TANGIBLE ITEM

No later than the next business day after a registered user files a tangible item in an ~~MDEC~~ action, the registered user shall file a "Notice of Filing Tangible Item" that describes the tangible item, identifies the electronically filed submission to which the tangible item is attached, and states why the tangible item could not have been filed electronically.

Cross reference: See Rule 20-106 (c)(2) for documents that shall not be filed electronically.

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete refences to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform this Rule to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to "MDEC" from the term "MDEC action."

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-205 by changing the term of art "MDEC action" to "action" in section (c), as follows:

Rule 20-205. SERVICE

(a) Original Process

Service of original process shall be made in accordance with the applicable procedures established by the other Titles of the Maryland Rules.

(b) Subpoenas

Service of a subpoena shall be made in accordance with the applicable procedures established by the other Titles of the Maryland Rules.

(c) Court Orders and Communications

The clerk is responsible for serving writs, notices, official communications, court orders, and other dispositions, in the manner set forth in Rule 1-321, on persons entitled to receive service of the submission who (A) are not registered users, (B) are registered users but have not entered an appearance in the ~~MDEC~~ action, and (C) are persons entitled to receive service of copies of tangible items that are in paper form.

(d) Other Electronically Filed Submissions

(1) On the effective date of filing, the MDEC system shall electronically serve on registered users entitled to service all other submissions filed electronically.

Cross reference: For the effective date of filing, see Rule 20-202.

(2) The filer is responsible for serving, in the manner set forth in Rule 1-321, persons entitled to receive service of the submission who (A) are not registered users, (B) are registered users but have not entered an appearance in the action, or (C) are persons entitled to receive service of copies of tangible items that are in paper form.

Committee note: Rule 1-203 (c), which adds three days to certain prescribed periods after service by mail, does not apply when service is made by the MDEC system.

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete refences to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform this Rule to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to "MDEC" from the term "MDEC action" in section (c).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 300 – OFFICIAL RECORD

AMEND Rule 20-301 by changing the term of art "MDEC action" to "action" throughout this Rule, as follows:

Rule 20-301. CONTENT OF OFFICIAL RECORD

(a) Generally

The official record of an ~~MDEC~~ action consists of:

(1) the electronic version of all submissions filed electronically or filed in paper form and scanned into the MDEC system;

(2) all other submissions and tangible items filed in the action that exist only in non-electronic form;

(3) the electronic version of all documents offered or admitted into evidence or for inclusion in the record at any judicial proceeding, pursuant to Rule 20-106 (e);

(4) all tangible items offered or admitted into evidence that could not be filed electronically or scanned into the MDEC system;

(5) a transcript of all court recordings of proceedings in the ~~MDEC~~ action; and

(6) all other documents or items that, for good cause, the court orders be part of the record.

(b) Hyperlinks

A hyperlink embedded in a submission is not a part of the official record unless it is linked to another document that is a part of the official record.

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete refences to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform this Rule to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to "MDEC" from each term "MDEC action."

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 – APPELLATE REVIEW

AMEND Rule 20-405 by changing the term of art "MDEC action" to "action" in section (b), as follows:

Rule 20-405. OTHER SUBMISSIONS

(a) Applicability

This Rule applies to a document filed in an appellate court that is not a brief, record extract, or appendix.

(b) Electronic Filing

Unless otherwise ordered by the Court, a submission by an attorney, a self-represented litigant who is a registered user, the Court, a judge of the Court, or a Clerk in an ~~MDEC~~ action shall be filed electronically.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete refences to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform this Rule to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to “MDEC” from the term “MDEC action” in section (b).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 500 – MISCELLANEOUS RULES

AMEND Rule 20-501 by changing the term of art "MDEC action" to "action" in the Committee note following subsection (b)(2), as follows:

Rule 20-501. MDEC SYSTEM OUTAGE

(a) Posting of Notices

(1) Outage Onset Notice

In the event of an MDEC system outage, the State Court Administrator, as expeditiously as possible, shall notify each registered user by posting an MDEC outage notice on the Judiciary website or by other electronic means. The notice shall state the date and time of the onset of the outage.

(2) Outage Termination Notice

Upon the termination of the MDEC system outage, the State Court Administrator, as expeditiously as possible, shall notify each registered user by posting an MDEC outage termination notice on the Judiciary website or by other electronic means. The outage termination notice shall state the date and time of the termination of the outage.

(b) Effect of Notice

(1) Electronic Submissions--Expiring Time Extended

If an MDEC system outage is posted for any portion of the same day that the time for filing a submission expires, the time to file the submission electronically is automatically extended until the first full day, other than a Saturday, Sunday, or legal holiday, that an outage termination notice is posted.

(2) Paper Submissions—Accepted

If, during an MDEC system outage, the courthouse is otherwise open for business, a registered user may elect to timely file the submission in paper form.

Committee note: There may be circumstances in which the courthouse where an ~~MDEC~~ action is pending is closed or otherwise unable to accept electronic submissions. In that situation, a filer is still able to transmit a submission through the primary electronic service provider in the normal way, even though the court may be temporarily unable to act on it.

Cross reference: See Rule 20-106 (b) for exceptions to required electronic filing.

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete refences to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform this Rule to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to "MDEC" from the term "MDEC action" in the Committee note following subsection (b)(2).

AGENDA ITEM 4

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT AND THE APPELLATE COURT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 8-132 by adding clarifying language in section (b) and by adding a cross reference following section (b), as follows:

Rule 8-132. TRANSFER OF APPEAL IMPROPERLY TAKEN

(a) Appeal to Improper Court

If the Supreme Court or the Appellate Court determines that an appellant has improperly noted an appeal to it but may be entitled to appeal to another court exercising appellate jurisdiction, the Court shall not dismiss the appeal but shall instead transfer the action to the court apparently having jurisdiction, upon the payment of costs provided in the order transferring the action.

(b) Appeal Improperly Filed in the Appellate Court

If a notice of appeal, application for leave to appeal, or petition for certiorari is improperly filed in the Appellate Court, the Court shall not reject the filing but shall note on the filing the date when it was received and transfer the filing to the proper court. The receiving court shall docket the filing using the date that the filing was received by the Appellate Court or, if applicable, is deemed filed pursuant to Rule 1-322 (d).

Cross reference: See Rule 1-322 (d) governing filings by self-represented individuals confined in certain facilities.

Cross reference: See Rules 8-201 and 8-204 regarding filing of a notice of appeal or application for leave to appeal to the Appellate Court in the lower court. See Rule 8-303 regarding filing of a petition for writ of certiorari in the Supreme Court.

Source: This Rule is in part derived from former Rule 814 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 8-132 were requested by the Clerk of the Appellate Court of Maryland to clarify the relationship between the provisions of section (b) of the Rule and the so-called "Prison Mailbox Rule" located in Rule 1-322 (d). Rule 1-322 (d) states that a pleading or paper filed by a self-represented individual confined in a correctional or detention facility without direct access to the mail is "deemed to have been filed" when it was deposited into an outgoing mail receptacle or given to an employee authorized to collect prisoner mail.

Rule 8-132 was amended in 2023 to add section (b), which applies to situations where an appellant files the correct type of appeal but does so with the wrong court (e.g. filing a notice of appeal with the Appellate Court rather than in the circuit court). The new section specifies that when the filing is transferred to the proper court, the receiving court should docket the filing "using the date that the filing was received by the Appellate Court." The Appellate Subcommittee was informed that filings subject to Rule 1-322 (d) are marked with the date of receipt and the "deemed filed" date as required by that Rule. The Appellate Subcommittee recommends clarifying that a filing transferred pursuant to Rule 8-132 (b) which is subject to Rule 1-322 (d) should be docketed using the "deemed filed" date proscribed by Rule 1-322 (d).

A cross reference to Rule 1-322 (d) is added after the section.

AGENDA ITEM 5

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT

AND THE APPELLATE COURT

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-511 as follows:

Rule 8-511. AMICUS CURIAE

(a) Authorization to File Amicus Curiae Brief

An amicus curiae brief may be filed only:

(1) upon written consent of all parties to the appeal;

(2) by the Attorney General in any appeal in which the State of Maryland may have an interest;

(3) upon request by the Court;

(4) as provided in subsection (e)(1) of this Rule; or

(5) upon the Court's grant of a motion filed under section (b) of this Rule.

(b) Motion and Brief

(1) Content of Motion

A motion requesting permission to file an amicus curiae brief shall:

(A) identify the interest of the movant;

(B) state the reasons why the amicus curiae brief is desirable;

(C) state whether the movant requested of the parties their consent to the filing of the amicus curiae brief and, if not, why not;

(D) state the issues that the movant intends to raise; and

(E) identify every person, other than the movant, its members, or its attorneys, who made a monetary or other contribution to the preparation or submission of the brief, and identify the nature of the contribution.

(2) Attachment of Brief

The proposed amicus curiae brief shall be attached to the motion.

(3) If Motion Granted

If the motion is granted, the brief shall be regarded as having been filed when the motion was filed. Promptly after the order granting the motion is filed, the amicus curiae shall file and serve paper copies of the brief as required by Rule 8-502 (c).

(c) Time for Filing

(1) Generally

Except as required by subsection (e)(3) of this Rule and unless the Court orders otherwise, an amicus curiae brief shall be filed ~~at or before the time specified for the filing of the principal brief of the appellee~~ no later than seven days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party shall file its brief no later than seven days after the appellant's or petitioner's principal brief is filed.

(2) Later Filing

An amicus curiae brief may be filed after the time specified in subsection (c)(1) of this Rule only with leave of court. An order authorizing late filing of an

amicus curiae brief shall specify the time within which an opposing party may answer.

(d) Compliance With Rules 8-503 and 8-504

(1) Generally

An amicus curiae brief shall comply with the applicable provisions of Rules 8-503 and 8-504, except as provided in subsection (d)(2) of this Rule.

(2) Exception

An amicus curiae brief filed pursuant to subsection (e)(1) or (f)(3) of this Rule shall comply with the applicable provisions of Rule 8-112. It may, but need not, comply with the provisions of Rules 8-503 and 8-504.

(e) Brief Supporting or Opposing Discretionary Review

(1) Motion Not Required

An amicus curiae brief may be filed in the Supreme Court on the question of whether the Court should issue a writ of certiorari or other extraordinary writ, or in the Appellate Court on the question of whether the Court should grant an application for leave to appeal. A motion requesting permission to file such an amicus brief is not required, provided that the amicus curiae brief is signed by an attorney pursuant to Rule 1-311.

(2) Required Contents

A brief filed pursuant to subsection (e)(1) of this Rule shall state whether, if the writ is issued or application is granted, the amicus curiae intends to seek consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.

(3) Time for Filing

(A) Unless the Court orders otherwise, an amicus curiae brief on the question of whether the Supreme Court should issue a writ of certiorari or other extraordinary writ shall be filed within seven days after the petition is filed.

(B) Unless the Court orders otherwise, an amicus curiae brief on the question of whether the Appellate Court should grant an application for leave to appeal shall be filed within 15 days after the record is transmitted pursuant to Rule 8-204 (c)(1).

(4) Length

A brief filed pursuant to subsection (e)(1) of this Rule shall not exceed 1,900 words.

(f) Reply Brief; Oral Argument; Brief Supporting or Opposing Motion for Reconsideration

Without permission of the Court, an amicus curiae may not (1) file a reply brief, (2) participate in oral argument, or (3) file a brief in support of, or in opposition to, a motion for reconsideration. Permission may be granted only for extraordinary reasons.

~~(g) Appellee's Reply Brief~~

~~Within ten days after the later of (1) the filing of an amicus curiae brief that is not substantially in support of the position of the appellee or (2) the entry of an order granting a motion under section (b) that permits the filing of a brief not substantially in support of the position of the appellee, the appellee~~

~~may file a reply brief limited to the issues in the amicus curiae brief that are not substantially in support of the appellee's position and are not fairly covered in the appellant's principal brief. Any such reply brief shall not exceed 3,900 words.~~

Source: This Rule is derived in part from Fed.R.App.P. 29 and Sup.Ct.R. 37 and is in part new.

REPORTER'S NOTE

AGENDA ITEM 6

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-305.5 by replacing an obsolete reference to Rule 19-215 with the correct reference to Rule 19-218 in comment [17], as follows:

Rule 19-305.5. UNAUTHORIZED PRACTICE OF LAW; MULTI-JURISDICTIONAL PRACTICE OF LAW (5.5)

. . .

[17] If an employed attorney establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the attorney is governed by Md. Code, Business Occupations and Professions Article, § 1-206 (d). In general, the employed attorney is subject to disciplinary proceedings under the Maryland Rules and must comply with Md. Code, Business Occupations and Professions Article, § 10-215 (and Rule 19-214) for authorization to appear before a tribunal. See also Rule ~~19-215~~ 19-218 (as to legal services attorneys).

. . .

REPORTER'S NOTE

The Rules Committee staff proposes an amendment to comment [17] of this Rule to replace the obsolete reference to Rule 19-215 with the correct reference to Rule 19-218.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

AMEND Rule 19-504 by replacing an obsolete reference to Rule 19-215 in sections (a) and (b) with the correct reference to Rule 19-218, as follows:

Rule 19-504. PRO BONO ATTORNEY

(a) Definition

As used in this Rule, "pro bono attorney" means an attorney who is authorized by Rule ~~19-215~~ 19-218 or Rule 19-605 (a)(2) to represent clients, without compensation other than reimbursement of reasonable and necessary expenses, and whose practice is limited to providing such representation. "Pro bono attorney" does not include (1) an active member of the Maryland Bar in good standing or (2) an attorney whose certificate of authorization to practice under Rule ~~19-215~~ 19-218 permits the attorney to receive compensation for the practice of law under that Rule.

Cross reference: For the professional responsibility of an active member of the Maryland Bar to render pro bono publico legal service, see Rule 19-306.1 (6.1) (Pro Bono Publico Service) of the Maryland Attorneys' Rules of Professional Conduct.

(b) Authorization to Practice as a Pro Bono Attorney

To practice as a pro bono attorney, an out-of-state attorney shall comply with Rule ~~19-215~~ 19-218 and a retired/inactive member of the Maryland Bar shall comply with Rule 19-605 (a)(2).

. . .

REPORTER'S NOTE

The Rules Committee staff proposes amendments to sections (a) and (b) of this Rule to replace the obsolete references to Rule 19-215 with Rule 19-218.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

AMEND Rule 19-505 by replacing an obsolete reference to Rule 19-215 with the correct reference to Rule 19-218, as follows:

Rule 19-505. LIST OF PRO BONO AND LEGAL SERVICES PROGRAMS

At least once a year, the Maryland Legal Services Corporation shall provide to the State Court Administrator a current list of all grantees and other entities recognized by the Corporation that serve low-income individuals who meet the financial eligibility criteria of the Corporation. The State Court Administrator shall post the current list on the Judiciary website along with information about pro bono opportunities in court-based legal services programs.

Cross reference: See Rules 1-325, 1-325.1, ~~19-215~~ 19-218, and 19-605.

Source: This Rule is derived from former Rule 16-905 (2016).

REPORTER'S NOTE

The Rules Committee staff proposes an amendment to the cross reference of this Rule to replace the obsolete reference to Rule 19-215 with the correct reference to Rule 19-218.